TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 195

THE STATE OF COLORADO, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND THE COLORADO AND SOUTHERN RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

FILED NOVEMBER 4, 1924

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[fol. 1] [Caption omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT**

THE STATE OF COLORADO, Plaintiff,

vs.

UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, and THE COLORADO AND SOUTHERN RAILWAY COMPANY, a Corporation, Defendants.

PETITION AND BILL OF COMPLAINT—Filed July 15, 1924

To the Honorable Judge of the District Court of the United States for the District of Colorado:

The sovereign state of Colorado, the plaintiff above named, by its attorney general, brings and files this, its Petition and Bill of Complaint against the defendants, The United States, The Interstate Commerce Commission, and The Colorado and Southern Railway Company, a corporation, above named, and complains and alleges:

1. That the State of Colorado is one of the Sovereign States of the United States of America and was a party to and is interested in certain proceedings heretofore brought and instituted before defendant, The Interstate Commerce Commission, by defendant, The Colorado and Southern Railway Company, as hereinafter more fully and particularly set forth.

2. That defendant, The Colorado and Southern Railway Company, is now and at all times since, to-wit, December 19, 1898, has been a railroad corporation duly organized and existing and doing [fol. 3] business as a common carrier and public utility corporation under and by virtue of the laws of the State of Colorado, and that said defendant corporation does now keep, and at all times hereinafter mentioned has kept and maintained, its principal offices at and within The City and County of Denver in said State of Colorado.

3. That this is a suit of a civil nature in equity which arises under the Constitution and Laws of the United States, wherein the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00) and is brought to enjoin, set aside, annul and suspend, in part, an order of the Interstate Commerce Commission, one of the defendants above named.

4. That the defendant, The Colorado and Southern Railway Company, was incorporated as aforesaid under the general incorporation laws of the State of Colorado concerning railroad corporations for the object and purpose, among others of acquiring and taking over maintaining and operating for the period of fifty (50) years from the date of filing its Articles of Incorporation, various lines of rail-

road which had theretofore been constructed and operated by other and different corporations, practically all of which said lines were and are located wholly within the State of Colorado, but some few miles of which did and do extend beyond the limits of said State into the States of Wyoming to the North and New Mexico to the South; and that in consideration thereof the State of Colorado, plain-[fol. 4] tiff herein, gave and granted unto said defendant railway corporation a charter and many value powers, franchises and privileges, including the power and right of eminent domain, all of which said charter, powers, franchises, rights and privileges the said railway corporation now has, holds and enjoys and has so had, held and enjoyed at all times since its incorporation, and none of which has it surrendered or relinquished.

5. That pursuant to the charter, franchise and powers so granted to it by plaintiff, the said defendant railway corporation forthwith proceeded to acquire and did acquire the said several and various lines of railroad and has since maintained and operated the same under said charter and franchise, as common carrier lines.

6. That among the lines of railroad so acquired, maintained and operated by said defendant, The Colorado and Southern Railway Company, under said charter, is a line of railroad approximately twenty-nine and one-half (29½) miles in length which extends from Buena Vista, Chaffe County, Colorado, to the towns of Romley, St. Elmo and Hancock in said County and State; that said line of railroad lies wholly and entirely within the State of Colorado, and wholly and entirely within the said County of Chaffee; that the said line is and at all times herein mentioned was, owned and operated by defendant, The Colorado and Southern Railway Company, and that the same is not, and for approximately fourteen (14) years has not been, a part of any other line and that the continued operation of said line in intrastate commerce is a matter of local concern only and will not burden or cripple any other line of rail-[fol. 5] road so as to effect its utility or service as an artery of interstate and foreign commerce, or at all.

7. That on or about September 1, 1921, defendant, The Colorado and Southern Railway Company, filed and caused to be filed with defendant, The Interstate Commerce Commission, an application or petition wherein and whereby said railroad corporation asked and sought the issuance to it by said Commission of a Certificate of Public Convenience and Necessity permitting the said railway company to abandon said Buena Vista-Romley line and to tear up and remove the tracks and structures thereof; that said The Interstate Commerce Commission thereupon assumed jurisdiction of said cause, and over said line of railroad, and caused said proceeding to be docketed as "Finance Docket No. 1572" before said Commission; that plaintiff and numerous others, including Chaffee County, Colorado, and the incorporated towns along said line and various mining and other industries located along and dependent on same, filed protests with said Commission against the granting of said

application or petition; that said Commission thereafter proceeded to hold and did hold several hearings concerning said matter and did take and cause to be taken, evidence on behalf of said defendant railway corporation, applicant therein as well as on behalf of the State of Colorado and of the other protestants and shippers, property owners and citizens residing along said line, all of which proceedings were had and held by said Commission over the objection of the State of Colorado, and said other protestants, to the [fol. 6] jurisdiction of said Commission over the intrastate commerce carried on, over and by means of said line of railroad.

8. That the proceedings before said The Interstate Commerce Commission, mentioned and referred to in the preceeding paragraph hereof, finally culminated, terminated and resulted in a report, decision, and order of said Commission dated February 11, 1924, a copy of which is hereto attached, marked "Exhibit A to the Complaint," reference to which is here made and by such reference made a part hereof as fully and so completely as if set out herein in full.

9. That plaintiff is informed and believes, and upon such information and belief alleges the truth and fact to be that pursuant to said report, decision and order, said The Interstate Commerce Commission did issue and cause to be issued to said defendant, The Colorado and Southern Railway Company, a certificate that the present and future public convenience and necessity did and does permit the abandonment by said railway company of the said line of railroad in Chaffee County, Colorado, both as to intrastate commerce and as to interstate and foreign commerce; and that the said defendant railway company now claims, asserts and contends that said report, decision, order and certificate are and constitute ample and complete authority to it to tear up and remove the tracks and structures of said line and to discontinue all intrastate as well as all interstate and foreign commerce service over said line.

10. Complainant shows that the said Interstate Commerce Com- [fol. 7] mission in making and issuing said findings and order, insofar as the same authorize or permit the abandonment of said line in intrastate commerce, exceeded the power and authority delegated to it by the Interstate Commerce Act and that said Commission erred as a matter of law in the following particular, to-wit:

That said Commission has no power or authority over purely intrastate commerce as such; and complainant alleges that no evidence was introduced before said defendant Commission showing or intending to show, and that there was no finding by the Commission, that the continued operation of said line of railroad in intrastate commerce would burden or cripple The Colorado and Southern Railway Company's other lines of railroad and thereby affect the utility of them or any of them as arteries of interstate commerce; and that no evidence was introduced before said Commission showing or tending to show the present fair value of said railway company's properties as a whole, nor of any part or por-

tion thereof, and that there was no finding by the Commission as to such value; that no evidence was introduced before said defendant Commission showing or tending to show the operating revenues and expenses of said defendant railway company's intrastate business considered separately, and that no evidence was introduced showing or tending to show the operating revenues and expenses of said company's interstate business considered separately, and that there was no finding by the Commission as to any such revenues and expenses; that no evidence was introduced before said [fol. 8] defendant commission showing or tending to show, and that there was no finding by the Commission, that said defendant railway company is not and was not earning a fair, lawful and reasonable return on the present fair value of its properties used and useful in the public service; that no evidence was introduced before said Commission showing or tending to show, and that there was no finding by the Commission, that the defendant Railway Company was not and is not earning a fair, lawful and reasonable return on the present fair value of that portion of its plant, properties and facilities used by it in and dedicated to the service of, intrastate commerce; and that there was no evidence before, and no finding by, said Commission that the alleged losses sustained and to be sustained in the continued operation of said line in intrastate commerce would or could reduce the defendant railway company's net operating income to a point where said company would not be getting, and would not earn, a fair and reasonable return on its said properties; and complainant alleges that the making of said order, and the issuance of said certificate of convenience and necessity authorizing the abandonment of said line as to intrastate commerce, is and was in excess of the power and authority of the said defendant Commission under the Act to Regulate Commerce and the Amendments thereto, and that said order and certificate are, and each of them is, to said extent, in violation of said Act and in contravention of the Constitution of the United States, more particularly the Fifth Amendment thereof, the benefit and protection of which said Act and Amendment the complainant specifically [fol. 9] claims; and complainant shows that to the extent aforesaid the said order was based, not upon any competent evidence, or upon any evidence, but was the result of mere conjecture and that said order, based on conjecture as aforesaid, is in excess of the authority of said Commission, and will, if enforced, violate the rights of complainant under the said Act to Regulate Commerce and Amendments thereto, and will violate and deny the right reserved to complainant under said Act and the Constitution of the United States to regulate and control its intrastate commerce.

11. Complainant shows that the said Interstate Commerce Commission in making and issuing said order and certificate exceeded the power and authority delegated to it by the Act to Regulate Commerce, and that said Commission erred as a matter of law in the following particulars, to-wit:

That said Commission has in effect, and over the objections of complainant, undertaken to pass upon contract rights of complain-

ant with said defendant Railway Company in this: that by said order and certificate said Commission has undertaken to release and relieve said defendant railway company of and from its contract and Charter obligation to operate said line of railroad in intrastate commerce for and during the life of its said Charter and so long as said Railway Company has and holds, claims and enjoys, the powers, rights and privileges granted to it by complainant; which said contract rights and charter obligations complainant here claims and asserts, and complainant alleges that said order is to the extent herein [fol. 10] indicated in violation of the Constitution of the United States and the Fifth Amendment thereof, the benefit and protection of which said Amendment complainant specifically claims.

12. Complainant further shows that the order and certificate of said The Interstate Commerce Commission, insofar as the same authorize or purport to authorize the abandonment of said line of railroad as to intrastate commerce, are and each of them is, arbitrary, illegal and void, and beyond the power and authority of said Commission to make, and violative of the contract and constitutional rights of plaintiff, and deprive plaintiff and its citizens of property and rights without due process of law; that the same are and each of them is unreasonable and confiscatory, contrary to the evidence submitted to said Commission and not supported or warranted by the evidence submitted to said Commission and are not based upon or supported by sufficient findings of fact by the Commission to authorize the abandonment of said line of railroad as to intrastate commerce.

13. Notwithstanding the matters and things hereinbefore alleged, the defendants are, and each of them is, threatening to enforce the orders complained of above and unless restrained and enjoined by this court will enforce said orders, and defendant, The Colorado and Southern Railway Company, will proceed on and after August 11, 1924, to abandon said line of railroad as to intrastate as well as interstate commerce and will tear up and remove the tracks and structures thereof and will then and thereafter refuse to continue [fol. 11] same in intrastate service, and plaintiff and its citizens, industries and people, particularly those located along said line of railroad and dependent upon it, will suffer great and irreparable injury and damage, all homes and industries located and dependent upon said line of railroad will be rendered useless and valueless for the reason that there is no other means of ingress and egress to and from said communities and localities except a very narrow, crooked and poorly kept mountain, dirt road which, on account of prevailing snow and ice conditions, is not open and cannot be used in the winter months. Plaintiff has, and its citizens and industries have, no adequate remedy at law for the redress of the injuries to be inflicted upon it and them by the enforcement of the order aforesaid, and it is necessary to the adequate protection of plaintiff and its citizens and property that equity should intervene with the power of injunction, and that preliminary and permanent injunctions be granted against the enforcement of the orders above complained of

and the tearing up and removal of said tracks and the withdrawal of said line of railroad from the service of intrastate commerce.

14. That defendant, The Colorado and Southern Railway Company, has not at any time, or in any way, sought, asked or obtained the consent of the State of Colorado nor of the Public Utilities Commission of the State of Colorado, to the abandonment of said line of railroad as to intrastate commerce, and the State of Colorado has not consented to such abandonment.

Wherefore, and inasmuch as plaintiff has no plain, speedy and [fol. 12] adequate remedy at law in the premises, plaintiff prays:

1. That the court grant unto plaintiff its right of subpoena directed to the defendants and each of them, requiring and commanding them and each of them at a certain time and under a penalty to be therein specified to be and appear before this court and answer the matters in this Petition and Bill of Complaint set forth, but not under oath (an answer under oath being hereby expressly waived) and to stand and abide by and perform such orders, directions an decrees as shall be made herein.

2. That this court find and decree that the orders of The Interstate Commerce Commission herein complained of are unwarranted, illegal and void insofar as they authorize or permit the abandonment of defendant, The Colorado and Southern Railway Company's line of railroad in Chaffee County, Colorado, as to intrastate commerce and that to said extent said orders be enjoined, set aside, annulled and suspended, and that the threatened action of abandondoning said line of railroad as to intrastate commerce and tearing up the tracks and structures thereof be enjoined.

3. That a restraining order and a preliminary or interlocutory injunction be granted restraining and enjoining the defendants and each of them, their agents and representatives, and all persons acting through or under them or any of them, pending this litigation, from enforcing or attempting to enforce the said order insofar as they [fol. 13] or any of them relate to intrastate commerce, or from taking any action looking to the abandonment of said line of railroad or the service thereon as to intrastate commerce.

4. That at the conclusion of this litigation a final injunction be granted permanently enjoining the abandonment of said line of railroad as to intrastate commerce under said orders.

5. That the plaintiff have such other, further and additional relief as to this court may seem equitable in the premises, together with costs of suit.

The State of Colorado, by Wayne C. Williams, Attorney General of Colorado; Riley R. Cloud, Assistant, Solicitors for Plaintiff. Barney L. Whatley, of Counsel.

Sworn to by Wayne C. Williams. omitted in printing.

[fol. 14] EXHIBIT "A" TO THE COMPLAINT

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1572

Abandonment of Branch Line by COLORADO — SOUTHERN RY.

Submitted December 1, 1923. Decided February 11, 1924

1. On further argument, findings in former report, 82 I. C. C., 310, affirmed.

2. Amended certificate issued authorizing the Colorado & Southern Railway Company to abandon a branch line of railroad in Chaffee [fol. 15] County, Colo.

E. E. Whitted, J. Q. Dier, and Bruce Scott for applicant.

Barney L. Whatley and Thomas A. Nevens for certain protestants.

Harry W. Robinson for Mary Murphy Gold Mining Company, protestant.

Russell W. Fleming, attorney general, and R. R. Cloud, assistant attorney general, for State of Colorado.

Report of the Commission on Further Argument

By the COMMISSION:

This proceeding has been before us on two former occasions. By our report and order issued July 28, 1922, 72 I. C. C., 315, we denied the application of the Colorado & Southern Railway Company for authority to abandon its branch line extending from Buena Vista to Romley, in Chaffee County, Colo., including certain trackage extending westerly from Romley, a total distance of 29.42 miles. While the record, as then made, disclosed that the line had been operated at a large loss for several years, the testimony of the protestants was to the effect that developments in progress would result in a substantial traffic increase within a short time. In our report we stated that the applicant might renew its application if the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time. On May 19, 1923, the applicant filed a petition for further hearing. The petition was granted and a further hearing held, at which it clearly appeared that the improvement in operating results anticipated by the protestants at the first hearing had not materialized, and that, in the interval between the two hearings, the traffic and revenue had shown a continued and progressive decrease. On September 24, 1923, we issued a report and certificate authorizing the applicant to abandon the line, 82 I. C. C., 310. The State of [fol. 16] Colorado, by its attorney general, and the other protestants filed petitions for a rehearing, and an order was entered assigning

the proceedings for further argument. The material facts are stated in our former reports.

The State of Colorado summarizes its position as follows: That the applicant is operating under a charter granted by the State of Colorado; that such charter is a contract with the State; that the applicant can not, except in violation of its contract, abandon a portion of its system within the State without the latter's consent; that the transportation act of 1920 does not and was not intended to take from the State its right, in the exercise of its police power, to regulate and control the intrastate operations of railroads chartered by it; that the rights of the State and the applicant under this charter contract are justifiable questions, and that a justiciable question involving the rights of a sovereign state, can only be settled by a court of competent jurisdiction, under the Constitution of the United States, and that this commission is not such a court. If its petition for rehearing be denied the State asks that the certificate be modified to show on its face that it does not authorize the tearing up or removal of the tracks without the consent of the State and its public utilities commission; to permit the abandonment of service as to interstate commerce only; and to postpone the effective date thereof for such reasonable time as will enable the inhabitants to find other habitations and to remove their effects.

The petition filed by the other protestants alleges that they did not have a fair chance to present their evidence before the examiner; that since our certificate was issued the market for complex ores has improved, and that this will increase the traffic; that consideration should have been given to the business of the applicant as a whole and not to the business of the branch line alone; that we should not authorize the abandonment as to intrastate service; that error was committed in considering an alleged offer of lease of the line; that a reasonable time for the effective date of the certificate [fol. 17] should have been fixed, and that the statutory time of 30 days is not a reasonable time. These protestants also ask that, if their petition be denied, the certificate be modified as requested by the State, with a further modification to permit a cessation of operations for a reasonable time only, and that we retain jurisdiction to order resumption of service when the claimed abnormal conditions now prevailing in the metal mining industry become normal.

From January 1, 1916, to May 31, 1923, the operating results of the branch line were: Operating revenues, $88,588.04; operating expenses $236,185.04; taxes, $157,244.35. The record does not show how much the applicant's taxes would be reduced through the proposed abandonment. Eliminating the item of taxes, the deficit in net operating revenues was $147,597. Practically all of the operating expenses excepting superintendence, are direct charges to the branch line. The operating revenues decreased from $25,507.68 in 1916 to $5,813.91 in 1922, and $1,788.18 for the first five months of 1923. The number of passengers carried decreased from 3,711 in 1916 to 725 in 1922, and 185 in the first five months of 1923. The record does not contain any assurance that future operations would show a more favorable result.

The applicant's net railway operating income for 1921 and 1922 was $1,903,793.39 and $1,061,877.35, respectively. For the first 11 months of 1923 it was $664,723, as shown by its monthly reports filed with us.

The protestants contend that paragraphs (18) and 21, inclusive, of section 1 of the act, in so far as they may attempt to confer exclusive jurisdiction upon us to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado and engaged in its intrastate commerce, are constitutional. The case of Texas v. Eastern Texas R. R. Co., et al., 258 U. S. 204, is relied upon to support such contention. In our opinion the conclusion therein reached does not apply to the facts in the present case. The applicant's lines are not located and doing business wholly within the State of Colorado. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and [fol. 18] it is required to bear or make good the deficits from such operation. It clearly appears that, in the language of the Supreme Court in the case above cited, the large losses sustained in operating the branch line "would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce." We are of opinion that we have jurisdiction.

It is argued that the applicants charter constitutes a contract between it and the State of Colorado, and that, therefore, it can not abandon the branch line without the consent of the State. That is a question for the courts to decide.

The applicant has offered to lease the line to the protestants at a nominal rental of $5 a year, provided they will operate it, and pay the operating expenses and taxes. The acceptance of this offer would enable the protestants to operate the line as an industry track or in any other manner acceptable to the State authorities. Our certificate herein will provide that it shall take effect and be in force from and after six months from the date it is issued.

Upon the facts presented we affirm the findings in our former report, 82 I. C. C., 310, and find that the present and future public convenience and necessity permit the abandonment by the applicant of the branch line of railroad in question. A certificate to that effect will be issued.

EASTMAN, Commissioner, dissents in part:

I agree that the conditions surrounding the line in question are such that public convenience and necessity do not require its continued operation, but I believe that our certificate should in terms be restricted to abandonment in interstate and foreign commerce.

In Texas v. Eastern Texas R. R. Co., 258 U. S., 204, the Supreme Court considered a similar certificate which we had issued permitting the abandonment of the Eastern Texas Railroad. The carrier had construed this certificate as permitting abandonment in intrastate as well as interstate and foreign commerce. At pages 216-7 of its opinion, the court says:

[fol. 19] The road lies entirely within a single State, is owned and operated by a corporation of that State, and is not a part of another

line. Its continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.

Referring to the transportation act and the interstate commerce act, the court state, at page 217, that "As a whole these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce." The court's conclusion, at page 218, is:

These considerations persuade us that the paragraphs in question should be interpreted and read as not clothing the Commission with any authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business.

Dealing with the analogous matter of intrastate rates in Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S., 563, the Supreme Court makes this statement, at page 590:

It is said that our conclusion gives the commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce [fol. 20] under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.

From these decisions I take it that where a line of railroad is situated, like the Eastern Texas, wholly within a single State and is not a branch or extension of a line operating between two or more States, we can not lawfully authorize its abandonment in intrastate commerce. Where it is such a branch or extension, however, we may lawfully authorize its abandonment in intrastate commerce, provided it clearly appears that its continued operation in such commerce will burden interstate and foreign commerce. That the effect upon the latter commerce must be substantial, and not trivial or relatively unimportant, is indicated by the words "burden

or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce," which appear in the Eastern Texas decision, and also by the analogous statement in the Wisconsin case that there must be "a substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce."

Congress intended no ruthless invasion of state authority, but only such incidental exercise of power as might be necessary to protect interstate commerce from substantial injury. Our certificate, therefore, should be restricted in this instance to abandonment in interstate and foreign commerce, unless we are prepared to find as a fact that the continued operation of this line in intrastate commerce will produce such injury. As nearly as I can determine, total abandonment will save applicant not more than $30,000 a year as a maximum. I am wholly unable to reach the conclusion that such a burden, if continued, would "cripple" applicant's main line or "affect its utility or service as an artery of interstate and for- [fol. 21] eign commerce," or that it would operate as an "obstruction to" interstate commerce. Interstate users of applicant's other lines, in my opinion, will enjoy no better rates and no better service when this branch is abandoned. If its operation burdens interstate commerce, it is a burden whose removal shippers will not be able to detect.

It impresses me as of the utmost importance that we should exercise power over intrastate commerce only in clear cases, where there is some real peril to interstate commerce, and this is not such a case. For that reason, while I believe that public convenience and necessity do not require the operation of the line in question, I am persuaded that our certificate should be restricted to interstate and foreign commerce, and that applicant should seek relief as to intrastate commerce from the State of Colorado. I am authorized to state that Commissioners Campbell and Cox concur in this expression of dissent.

Commissioners McChord and McManamy also dissent.

Amended Certificate of Public Convenience and Necessity

At a General Session of the Interstate Commerce Commission Held in Its Office, in Washington, D. C., on the 11th Day of February, A. D. 1924.

Finance Docket No. 1572

Abandonment of Branch Line by Colorado & Southern Ry.

A further argument and investigation of the matters and things involved in this proceeding having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity permit the abandonment of the Colorado & Southern Railway Company of the branch line of railroad in Chaffee County Colo., described in the application and report aforesaid.

[fol. 22] It is ordered, That the Colorado & Southern Railway Company when filing schedules canceling tariffs applicable on said branch line, shall in such schedules make specific reference to this certificate by title, date, and docket number.

It is further ordered, That this certificate shall take effect and be in force from and after six months from the date of its issue, and shall replace the certificate of public convenience and necessity issued September 24, 1923, in this proceeding.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

7717

[Title omitted]

[fol. 23] ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Aug. 7, 1924

The Interstate Commerce Commission, a defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's petition and bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering Paragraphs 1 to 3 inclusive of the petition and bill of complaint, hereinafter referred to as the petition, said defendant, Interstate Commerce Commission, hereinafter called the Commission, admits for the purposes of this suit that the allegations contained in said paragraphs are true.

II

Answering Paragraphs 4 and 5 of the petition, the Commission admits that The Colorado & Southern Railway Company was incorporated under the laws of the State of Colorado and that it acquired and has since operated, various lines of railroad located in said State and extending beyond into the States of New Mexico and Wyoming but disclaims information sufficient to form a belief as to the truth of the other allegations in said paragraphs.

III

Answering Paragraph 6 of this petition, the Commission admits [fol. 24] and alleges that the defendant, The Colorado & Southern Railway Company, operated a line of railroad approximately twenty-nine and one-half miles in length within the County of Chaffee, State of Colorado, which said line is more fully described in the report and order of the Commission, dated July 28, 1922, at pages 317 and 318, in a certain proceeding which was docketed before the Commission as "Finance Docket No. 1572" and which is hereinafter referred to more particularly. A copy of said report and order is hereto attached as Exhibit 1 and is hereby made a part hereof.

The commission denies that the continued operation of said line in intrastate commerce is a matter of local concern only and denies that such operation will not burden or cripple any other line of railroad so as to affect its utility or service as an artery of interstate and foreign commerce, or at all. The Commission alleges that The Colorado and Southern Railway Company is an interstate carrier and as such operates its railroad lines within and beyond the limits of the State of Colorado in intersate and foreign commerce; that for many years said railway company has sustained substantial and constantly increasing deficits in its operation of the line referred to in said paragraph, which deficits are more fully described in the Commission's report, a copy of which is attached to the petition as Exhibit A; that the results of operating said line are reflected in said railway company's accounts; that said railway company is required to bear or make good the deficits from such operation; and that in consequence the continued unremunerative operation of said line [fol. 25] by said railway company will impose an undue burden upon said railway company's other lines so as to affect their utility and service as arteries of interstate and foreign commerce, will impair said company's efficiency as an instrumentality of interstate and foreign commerce, and will constitute a burden upon such commerce.

IV

Answering Paragraphs 7 and 8 of the petition, the Commission admits that the allegations of fact contained therein are true.

V

Answering Paragraph 9 of the petition, the Commission admits that it made and issued the report and order referred to in said paragraph, but refers the court to said report and order, which are Exhibit A to the petition, for information concerning the contents and effect of same.

VI

Answering Paragraph 10 to 12, inclusive, of the petition, the Commission denies that in making and issuing its findings, certificate and order referred to in said paragraphs, it exceeded the power

and authority delegated to it by the Interstate Commerce Act and denies that said certificate and order were arbitrary, illegal, or void, or in violation of the Constitution of the United States or the Fifth Amendment thereof. The Commission alleges that in said proceeding it accorded to plaintiff herein and other interested parties, a full hearing; that at the hearings in said proceeding a large volume of testimony and other evidence, bearing upon the matters covered by [fol. 26] said report, certificate and order of February 11, 1924, and its report and findings of September 24, 1923, referred to therein, was submitted to the Commission for consideration on behalf of the parties to said proceeding by their respective counsel a copy of which said report and findings last referred to is hereto attached as Exhibit 2 and is hereby made a part hereof; that at said hearings and subsequently, both orally and in briefs, questions relating to said matters were fully argued and submitted to the Commission for determination, on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and entered and served upon the petitioner and other interested parties said report, certificate and order of February 11, 1924, wherein it set forth its findings and conclusions and its decision, order and requirements in the premises.

The Commission further alleges that the facts, findings and conclusions set forth in said report dated February 11, 1924, and in said report referred to therein dated September 24, 1923, were and are, and each of them was and is, fully supported and justified by the evidence which was before the Commission in said proceeding.

The Commission further alleges that it considered and weighed carefully, in the light of its own knowledge and experience, each of and all the matters called to its attention by plaintiff and other parties who were represented in said proceeding by their respective counsel, including the matters covered by the allegations contained in the petition herein.

[fol. 27] The Commission further alleges that said report, certificate and order of February 11, 1924, were not made by it either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it, and that in making said certificate and order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner.

VII

Answering Paragraph 13 of the petition, the Commission denies that, if said certificate and order become effective as alleged in said paragraph, the irreparable injury referred to therein will result.

VIII

Answering Paragraph 14 of the petition, the Commission disclaims information sufficient to form a belief as to the truth of the allegations in said paragraph.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in said petition,

insofar as they conflict either with the allegations herein, or with either the findings or conclusions of fact included in said report, certificate and order of February 11, 1924, a copy of which is attached as Exhibit A to the petition and is hereby referred to and made a part hereof, or in said report and order of September 24, 1923, a copy of which is attached hereto as Exhibit 2.

All which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby [fol. 28] prays that said petition be dismissed.

Interstate Commerce Commission, R. Granville Curry, by R. Granville Curry, Assistant Counsel. P. J. Farrell. P. J. Farrell, of Counsel.

Sworn to by Balthaser H. Meyer. Jurat omitted in printing.

[fol. 29] EXHIBIT 1 TO ANSWER OF INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1572

Abandonment of Branch Line by COLORADO & SOUTHERN RY.

In the Matter of the Application of the Colorado & Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing it to Abandon a Branch Line of Railroad.

Submitted June 15, 1922. Decided July 28, 1922

Proposed abandonment of a branch line of railroad in Chaffee County, Colo., held not justified. Application denied.

R. B. Scott, E. E. Whitted, and John Q. Dier for applicant.

Barney L. Whatley for town of St. Elmo, Flora Bell Mining Company, Rarus-Warrier Minning Company, Colorado Silver Mines Company, Colorado Metal Mining Association, and Colorado Metal Mining Board; G. K. Hartenstein for town of Buena Vista; and Henry W. Robinson and George E. Collins for Mary Murphy Gold Mining Company.

Thomas A. Nevens for Board of County Commissioners of Chaffee County.

John E. Benton, Grant E. Halderman, chairman and A. P. Anderson for Public Utilities Commission of Colorado.

Report of the Commission

Division 4, Commissioners Meyer, Eastman and Potter

By Division 4:

[fol. 30] The Colorado & Southern Railway Company, a carrier by railroad subject to the interstate commerce act, on September 1, 1921, filed an application for a certificate of public convenience and necessity, pursuant to paragraph (18) of section 1 of the interstate commerce act, authorizing it to abandon its Buena Vista-Romley branch, which is located wholly in Chaffee County, Colo. Intervening petitions protesting against the proposed abandonment were filed by the town of St. Elmo, the Flora Bell Mining Company, the Mary Murphy Gold Mining Company, the Board of County Commissioners of Chaffee County, and the town of Buena Vista. A hearing was held upon notice to interested parties. The matters of record were made the subject of a proposed report by an examiner, to which report exceptions were filed by the applicant, and the case was argued orally by the parties.

Prior to the hearing the State of Colorado, by its public utilities commission, filed a motion to dismiss the proceeding on the ground that the applicant's railroad is located wholly within the State of Colorado and therefore we have no jurisdiction to authorize its abandonment, and a hearing was held thereon. This motion was renewed at the main hearing, and like motions were made on behalf of certain of the intervening protestants. While the branch line lies entirely within the State of Colorado, it constitutes a part of applicant's system its operating results are reflected in the accounts of the applicant, and the latter would be required to bear or make good any deficits from its operation. We are therefore of opinion that we [fol. 31] have jurisdiction.

The branch line in question extends from Buena Vista in a southerly and westerly direction to Romley and includes certain trackage extending westerly from Romley to the Flora Bell Mine and Hancock, a total distance of 29.42 miles. It has no connection with any of applicant's other operated lines. Its eastern terminus at Buena Vista is approximately 29 miles southwest of Garos, Park County, Colo., through which point applicant's nearest operated line of railroad extends. This branch comprises a segment of a narrow-gauge line of railroad which was constructed during the years, 1874 to 1882 from Denver, across the Continental Divide by means of the Alpine Tunnel, to Gunnison and the Gunnison County coal fields. This railroad was continuously operated until 1910. At that time the line between Garos and Macune, a distance of 28.84 miles, and between Hancock and Quartz, a distance of 13.57 miles, including the Alpine Tunnel, was abandoned, and operation thereover has never been resumed. A large part of the abandoned track has been washed out and destroyed. Operation of that portion of the line from Quartz to its western terminus was taken over by the Denver & Rio Grande Railroad Company and has since been and is now being operated as a part of that company's system, with the exception of that

portion thereof which parallels the Denver & Rio Grande Railroad between Parlin and Gunnison, a distance of 11.64 miles, which portion has also been abandoned and parts thereof destroyed. The applicant acquired ownership of the line in 1898. It has continued to [fol. 32] operate the branch in question from Buena Vista to Romley for the purpose of furnishing transportation facilities for certain communities, mining camps, and mines located in the mountains west of Buena Vista and east of the Continental Divide. The track is laid with 40-pound to 56-pound rail and the maximum grade is 4 per cent. The present service consists of a mixed train which makes the round trip three days a week. The equipment consists of one locomotive, one combination baggage car and passenger coach, and a few box, coal, and flat cars.

The territory traversed by the branch is described as extremely rugged and mountainous. The principal industry is mining, but there has been a small agricultural and lumbering development. The only town of importance served by the branch is Buena Vista, with a population of 903. This town is also served by the Denver & Rio Grande Railroad. There are several small communities along the line which are not served by any other railroad. The distances from these points to another railroad range from 5.4 miles to 21.29 miles. The population of the tributary territory, including the population of Buena Vista, is estimated by the applicant at 993.

This line serves a metal-iferous mining section. There are a number of mines located on the road and dependent upon it for transportation. It is stated that the Mary Murphy mine represents an investment of approximately $2,000,000, that is has erected a mill at an expense of $160,000, and has spent other large sums on permanent improvements. Ore to a value in excess of $2,000,000 has [fol. 33] been taken from its upper levels. At the time this mine was in full operation it employed from 175 to 200 men. Some small operations are being conducted at this mine at the present time and considerable development work was done in 1920 and 1921. The owners of the Flora Bell mine have expended $92,000 in development work and have erected a mill at a cost of $50,000. Testimony was offered to the effect that this mine is about ready to begin shipments on a fairly extensive scale. Over $80,000 has been expended in development work by the Colorado Silver Mines Company, which has a large body of ore in sight and blocked out. The owners of the Rarus-Warrior mine have expended $14,000 in development. It is testified that within the six weeks preceding the hearing a promising body of ore was opened in this mine and that it would be in a position to begin shipping in a small way by May 1. The ores from this mining district are described as complex, and contain silver, le-d, zinc and a small amount of gold. When the mill at the Mary Murphy mine is operating its concentrates are shipped to eastern distillation plants for treatment and then shipped back to Colorado for smelting. The oxidized or partly oxidized ores are shipped to the smelter at Leadville for treatment. The owner of a granite quarry located on the line testified that he was deterred from beginning operations because of the published notice of the application for aban-

donment, and that if the railroad were maintained he would start work within 60 days. On the part of the protestants it is asserted [fol. 34] that the abandonment of the line would result in a loss of their entire investment and the abandonment of the whole district, as no other practical means of transport is available. A wagon road extends from Buena Vista to Romley, paralleling the railroad for a portion of the distance. Some testimony was offered as to the feasibility of utilizing this wagon road for the purpose of hauling ores to the Denver & Rio Grande Railroad and transporting inbound supplies.

It appears that this road is impassable during the winter months, and from the whole testimony the conclusion appears warranted that the economical hauling of ores and supplies over this wagon road would be impossible. The applicant contends that the abandoned railroad grade would constitute a suitable highway over which to haul ores and supplies by tractors, and that such means of transport is now being employed in other parts of the State. A dealer in tractors testified that ores could be hauled from Romley to the railroad at Nathrop at an estimated cost of $1.37 per ton by the use of a 10-ton tractor and three 10-ton trailers. This estimate was based on the summer months and did not take into consideration any tonnage on the inbound trip. It does not appear from the record that the applicant owns the right of way. Assuming that the abandoned railroad grade would be available for such purpose, it is apparent that it would require a large expenditure in order to construct a road upon it capable of withstanding the impact of such heavy loads.

[fol. 35] A statement submitted by the applicant covering operations of the branch line from January 1, 1916, to November 30, 1921, shows operating revenues, $80,603.50; operating expenses $185,912.74; taxes, $106,716.87; interest, $145,550; total deficit $357,576.11. It thus appears that over 70 per cent of the total deficit consists of charges to interest and taxes. The branch line is subject to applicant's first mortgage, under which bonds to the principal amount of $19,400,000 are outstanding, and to its refunding and extension mortgage, under which bonds are outstanding to the principal amount of $28,978,900. There are no evidences of indebtedness resting wholly upon the branch line. It thus appears that the proposed abandonment would not effect any reduction in applicants present interest charges.

From the testimony of a member of the Colorado Tax Commission, it appears that the assessed valuations of railroad properties are based upon a full cash valuation, and that in arriving at a valuation consideration is given to the securities, earnings, and to some extent the physical value of the properties. After the value of the whole system is ascertained, the tax is distributed over the system to the various counties in proportion to the main-track miles in the county, both operated and nonoperated. No figures were available as to the actual tax valuation placed on this branch, but in the distribution of the gross value of all of applicant's property there was allocated to this branch a valuation of $31,414 a mile. This witness further tes-
[fol. 36] tified that the valuation allocated to the branch line was not

necessarily its actual value, and that if the actual value were proportionately less than the valuation of the main line the taxes allocated to Chaffee County would be on a basis in excess of the value of the branch line, but would tend to reduce the taxes paid on applicant's other lines. This testimony leaves in doubt the question as to how much, if at all, applicant's tax payments would be reduced by the abandonment of this branch. However, when a part of a railway system like this branch fails to earn operating expenses, the taxing authorities, in the public interest, may well give consideration to the possibility of affording relief to the extent of their authority.

The general balance sheet of the applicant, as of November 30, 1921, showed capital stock $48,000,000, of which $17,000,000 is preferred stock and $31,000,000 is common stock; unmatured funded debt, $49,358,900; investment in road and equipment, $79,280,888.66; profit-and-loss credit balance, $5,397,840.91. Net railway operating income for the five-year period from January 1, 1916, to December 31, 1920, totaled $13,723,554. For the years 1918, 1919 and the first two months of 1920 the reslults shown are from operation by the United States Railroad Administration. Operations for the first 11 months of 1921 resulted in a net railway operating income of $1,869,401.

The evidence of the applicant shows that the traffic on this line has largely decreased during the last four or five years. The testimony tends to show that this is the result of depressed conditions due [fol. 37] to the war and that the same conditions have existed throughout the other metal-mining districts of the State, with a similar result. The mill at the Mary Murphy mine was closed in 1919. During the past two or three years shipments have practically been limited to ores extracted in development work. It appears that during this period of depression large sums have been spent on these mines in the expectation of continued railroad service. From the testimony of men familiar with mining conditions in Colorado it appears that some of the conditions that caused the depression in the industry have been removed, that the tendency of metal prices is upward, that improved conditions are to be expected, and that the mines along this line will be successfully worked.

In support of its position the applicant cites our report and order in Abandonment of Hawkinsville & Florida Souther Ry., 70 I. C. C., 566. That application involved the abandonment of an entire line of railroad for the reason that it appeared that it had not been and could not be operated except at a loss. It is obvious that that decision does not constitute a precedent for our action on this application, which only involves the proposed abandonment of a short branch line, comprising but a small part of applicant's total mileage.

The abandonment of this branch would deprive a large section of the benefits of rail transportation, would end the development of the resources tributary to the line, and would probably result in the abandonment of this mining district and the loss of the large investments heretofore made. While the operation of the line for the past [fol. 38] four or five years has resulted in substantial losses, the record

affords some assurance that the conditions which produced that result are changing and that future operations may show a more favorable return.

Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application. It is not in the public interest that even a strong line like the applicant should permanently operate parts of its system that do not yield revenues sufficient to pay operating expenses and interest on the net scrap value of the property. Persons directly interested in the continued operation of the line should cooperate to the fullest extent possible with the management of the road with the view of effecting more favorable operating results. The offer of the applicant to lease the line proposed to be abandoned to protestants at a rental of $5 per year should be given serious consideration by protestants.

An order will be entered denying the application.

Commissioner Potter did not participate in the disposition of this case.

Order

A hearing in this proceeding and investigation of the matters [fol. 39] and things involved therein having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the application be, and it is hereby, denied.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

EXHIBIT 2 TO ANSWER OF INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1572

Abandonment of Branch Line by COLORADO & SOUTHERN RY.

In the Matter of the Application of the Colorado & Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing it to Abandon a Branch Line of Railroad.

Finance Docket No. 1572

Abandonment of Branch Line by COLORADO & SOUTHERN RY.

[fol. 40] In the Matter of the Application of the Colorado & Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing it to Abandon a Branch Line of Railroad.

Submitted September 4, 1923. Decided September 24, 1923

On further hearing certificate issued authorizing the Colorado & Southern Railway Company to abandon a branch line of railroad in Chaffee County, Colo. Previous report 72 I. C. C., 315.

E. E. Whitted, J. Q. Dier, and Bruce Scott, for applicant.
Barney L. Whatley and Thomas A. Nevens for certain protestants.
Harry W. Robinson for Mary Murphy Gold Mining Company.
Russell W. Fleming, attorney general, for State of Colorado.

Report of the Commission on Further Hearing

Division 4, Commissioners Meyer, Eastman, and Potter

By DIVISION 4:

By our report and order in this proceeding issued July 28, 1922, 72 I. C. C., 315, we denied the application of the Colorado & Southern Railway Company for authority to abandon its branch line extending from Buena Vista to Romley, in Chaffee County, Colo., including certain trackage extending westerly from Romley, a total distance of 29.42 miles. In our report we said:

Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, [fol. 41] should not materialize within a reasonable period of time, the applicant may renew its application.

On May 19, 1923, the applicant filed a petition praying that the case be reopened and set for further hearing. This petiton was granted and a further hearing was held at Denver, Colo., on July 13, and 14, 1923.

The record made at the further hearing clearly established that the improvement in operating results anticipated by the protestants at the first hearing has not materialized, and that the operation of the line since the original application was filed has resulted in a large deficit. For the year 1922, operating revenues were $5,813.91; operating expenses, $30,654.28; and taxes, $28,838.42. For the first five months of 1923 operating revenues were $1,788.18; operating expenses, $15,401.79; and taxes, $12,016.01. The total tonnage transported in 1922 was 1,865 tons, and in the first five months of 1923, 357 tons. In the latter part of 1922 the rate on ore to the smelter at Leadville was reduced approximately 50 cents a ton in an endeavor to increase the traffic.

The protestants assert that the past winter was unusually severe; that the railroad shopmen's strike made it impossible to secure shipments of coal; that mine owners and operators were deterred from investing money in their properties because of the statements in our reports hereinabove set forth; and that because of all these circumstances a reasonable time has not elapsed since our order was [fol. 42] entered in which to determine whether the results of operation are likely to show improvement. It is claimed that conditions in the mining industry are and have been abnormal. Considerable reliance is placed upon the alleged discovery of a new process for treating and separating complex ores, which it is hoped will enable mine owners in this district to ship ores which can not now be mined profitably, and thus result in increasing the traffic over this line. It is further contended by the protestants that the proposed abandonment is not within the applicant's charter powers; and that paragraphs 18 to 21, inclusive, of section 1 of the transportation act are unconstitutional in so far as they may attempt to confer exclusive jurisdiction upon this commission to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado.

The case of Texas v. Eastern Texas R. R. Co., et al., 258 U. S., 204, is cited in support of the last proposition. In our opinion the conclusion therein reached does not apply to the facts in the present case. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation.

The case for the protestants rests largely upon optimistic predictions and hopes. The record shows that for many years the operation of this branch line has caused the applicant a large annual loss. No definite evidence is submitted upon which a conclusion could be based as to when, if ever, sufficient traffic could be developed to pay [fol. 43] the costs of operation. At the further hearing the applicant renewed its offer to lease the line to the protestants at a rental of $5 a year, provided they would operate it in its present condition, or to sell it to them for its scrap value.

Upon the facts presented we find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. A certificate to that effect will be issued.

Commissioner Eastman did not participate in the disposition of this case.

Certificate of Public Convenience and Necessity

Issued September 24, 1923

A further hearing and investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is hereby certified, That the present and future public convenience and necessity permit the abandonment by the Colorado & Southern Railway Company of the branch line of railroad in Chaffee County, Colo., described in the application and report aforesaid.

It is ordered, That the Colorado & Southern Railway Company, when filing schedules canceling tariffs applicable on said branch line of railroad, shall in such schedules make specific reference to [fol. 44] this certificate by title, date, and docket number.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[File endorsement omitted.]

In United States District Court

[Title omitted]

Answer of the Colorado and Southern Railway Company—Filed Aug. 7, 1924

Comes now The Colorado and Southern Railway Company, defendant herein, and answering the petition and bill of complaint filed herein says:

1. It admits that the State of Colorado is one of the sovereign [fol. 45] States of the United States of America, and by intervention became a party to certain proceedings heretofore brought and instituted by this defendant before the Interstate Commerce Commission, under and pursuant to the provisions of the Interstate Commerce Act, but this defendant denies that the State of Colorado had or now has any real or genuine interest or concern therein.

2. It admits that this defendant is, and since December 19, 1898, has been, a corporation duly organized and existing under and by

virtue of the laws of the State of Colorado relating to the incorporation of railroad corporations, and doing business as a common carrier by railroad, pursuant to the laws of the United States and of the various states in and through which it operates and carries on its said business; it also admits that its principal offices are now and at all times have been in the City of Denver and in the State of Colorado.

3. It admits that this is a suit of a civil nature in equity arising under the constitution and laws of the United States, and that the matter in controversy, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000) Dollars, and is brought for the purpose of attempting to enjoin, set aside, annul and suspend, in part an order of the Interstate Commerce Commission.

4. It admits that this defendant was incorporated for the object and purpose, among others, of acquiring, taking over, maintaining, completing and operating, for a period of fifty (50) years from the date of the filing of its Articles of Incorporation, various lines [fol. 46] of railroad which had been formerly constructed, owned, possessed and operated by other and different corporations; it denies that practically all of such lines of railroad were and are located wholly within the State of Colorado, or that only a few miles of such lines of railroad did or do extend beyond the limits of said State into the State of Wyoming on the north and the State of New Mexico on the south. It alleges, that, to the contrary, this defendant's main track operated mileage, exclusive of side, industrial, switching or yard tracks, is, and for many years has been, approximately 1,100 miles; that of said main track mileage approximately 144 miles are, and for many years have been, located within the State of Wyoming, approximately 83 1-3 miles are, and for many years have been, located within the State of New Mexico, and approximately 872 miles are, and for many years have been, located within the State of Colorado; that exclusive of 31 miles of its broad gauge main line leased to and operated by Chicago, Burlington & Quincy Railroad Company and extending from Wendover to Orin Junction, Wyoming, this defendant's broad or standard gauge railroad extends from Wendover, Wyoming, (where it connects, as aforesaid, with the main line of the Chicago, Burlington & Quincy Railroad Company, extending from Wendover, through Orin Junction and Casper, Wyoming, to Billings, Montana,) to Sixela, New Mexico, where it connects with the main line of the Fort Worth and Denver City Railway Company, extending to Fort Worth, Texas; that the main track mileage of said broad gauge railroad, extending from Wendover, Wyoming, through Denver, Pueblo and Trinidad, Colo- [fol. 47] rado, to Sixela, New Mexico, as aforesaid, is approximately 588 miles, of which approximately 134 miles are located in the State of Wyoming, 83 1-3 miles in the State of New Mexico, and 370¾ miles in the State of Colorado; that in addition to said broad gauge railorad this defendant owns, is now operating and for many years past has operated, approximately 291 miles of main track narrow gauge railroad, located wholly within the State of Colorado, which

said narrow gauge lines of railroad, with the exception of the Buena Vista-Romley branch in the bill of complaint referred to, connect at Denver with said broad gauge railroad and constitute a part of this defendant's interstate system of railroad and over which, including said Buena Vista-Romley branch, interstate commerce is transported. Further answering paragraph 4 of the bill of complaint, this defendant admits that by virtue of its incorporation under the laws of Colorado, the power of eminent domain for certain purposes and certain other powers, franchises, rights and privileges were conferred upon it, and that it has since had, held and exercised, and still has, holds, and exercises such powers, franchises, rights and privileges.

5. It admits that subsequently to its incorporation it acquired, extended and completed the various lines of railroad hereinabove referred to, and that it has since maintained and operated the same as a common carrier by railroad, pursuant to the laws of the United States and of the States of Wyoming, Colorado and New Mexico.

6. It admits that among the lines of railroad so acquired, maintained and operated by this defendant, is a line of narrow gauge [fol. 48] railroad, approximately 29½ miles in length, extending from Buena Vista, through St. Elmo to Romley, with trackage to Hancock, Colorado, commonly known as and herein referred to as its Buena Vista-Romley branch, which connects with the railroad of the Denver & Rio Grande Western Railroad Co., at Buena Vista; that said part of this defendant's said lines of railroad is located wholly and entirely within the County of Chaffee and the State of Colorado, and that said part of said lines of railroad is not, and for approximately fourteen (14) years has not been directly physically connected with any of this defendant's other lines of railroad. It denies that the operation of said line of railroad in intrastate commerce in the past has been, or that it continued operation in intrastate commerce in the future will be, only a matter of local concern, and denies that such operation will not burden or cripple any of the other lines of railroad of this defendant, or affect the ability of this defendant to perform its duties, or to render service as an artery of interstate or foreign commerce, or at all. This defendant avers that the losses incurred in the operation of this part of said railroad are a burden upon interstate commerce. That although the said Buena Vista-Romley branch has been honestly, efficiently and economically managed, there have been and are large losses to this defendant in such operation of said railroad, there being an operating deficit resulting from such operation for the years and in the amounts as here shown, and, taking into account the taxes on said line of railroad, there has been a net railway operating deficit in the operation of [fol. 49] said railroad for the years and in the amounts as here shown, which said operating deficits and said net railway operating deficits as aforesaid are carried into and become a part of the accounts of this defendant as an interstate railroad, and the losses so sustained by this defendant in the operation of said line of railroad are

and have been to it heavy and substantial. The said facts as to said operating deficits and said net railway operating deficits are these, to-wit:

Year	Operating deficit	Net railway operating deficit
1916	$12.87	$14,243.46
1917	7,354.51	25,257.81
1918	19,712.54	35,963.41
1919	23,862.94	43,880.91
1920	28,995.56	51,725.97
1921	29,298.40	54,555.18
1922	24,840.37	53,678.79
1923	29,571.23	56,050.39
To June 30, 1924	13,291.08	26,530.61
Total	$176,939.50	$361,886.53

This defendant further avers that the foregoing facts as to the years 1916 to 1922, both inclusive, were shown in the evidence constituting part of the record before the Interstate Commerce Commission.

7. It admits that on or about September 1, 1921, this defendant filed with the Interstate Commerce Commission an application or petition, wherein or whereby it asked and sought the issuance by said Interstate Commerce Commission of a Certificate of Public Convenience and Necessity, permitting this defendant to abandon said [fol. 50] Buena Vista-Romley line of railroad, and remove the tracks and structures thereof; it admits that the Interstate Commerce Commission assumed jurisdiction of said application and caused said proceeding to be docketed as its "Finance Docket No. 1572"; it admits that protests were filed with the Interstate Commerce Commission against the granting of said Application by the town of St. Elmo, Colorado; the town of Buena Vista, Colorado, the Board of County Commissioners of Chaffee County, Colorado, The Flora Bell Mining Company, and The Mary Murphy Gold Mining Company; it denies that the plaintiff herein ever filed a protest with the Interstate Commerce Commission against the granting of said application or petition; it admits that during the course of said proceedings the plaintiff appeared and participated therein in opposition to the granting of said certificate; it admits that the Interstate Commerce Commission, subsequently to the filing with it of said application or petition, proceeded to hold, and did hold, hearings concerning said application, and did take and cause to be taken evidence on behalf of this defendant, as well as evidence on behalf of the protestants therein, but it denies that any evidence was offered or was taken on behalf of the plaintiff herein, or that any objection whatsoever was made, on behalf of the plaintiff herein, to said proceedings on the ground or for the reason that the Interstate Commerce Commission did not have full and complete jurisdiction thereover.

8. It admits that said proceedings before the Interstate Commerce Commission finally culminated, terminated and resulted in a report or decision and order of said Commission, dated February 11, 1924,

[fol. 51] and that Exhibit "A" attached to the Bill of Complaint filed herein is a substantially accurate copy of said report or decision and order.

9. It admits that the Interstate Commerce Commission did issue a Certificate of Public Convenience and Necessity to this defendant, authorizing the abandonment of said Buena Vista-Romley line of railroad, as to intrastate, interstate and foreign commerce, a copy of which said Certificate of Public Convenience and Necessity is included in and constitutes a part of said Exhibit "A" attached to the bill of complaint filed herein, and it admits that this defendant now claims, asserts and contends that said report or decision and order or certificate are and constitute ample and complete authority to abandon and remove the tracks and structures of said branch line of railroad, and to discontinue all intrastate, as well as interstate and foreign commerce, service thereover.

10. It denies that the Interstate Commerce Commission, in making or in issuing its said report or decision or findings and order or certificate, exceeded in any respect whatsoever the power or authority delegated to it by the Interstate Commerce Act, and it denies that said Commission erred as a matter of law in any of the particulars specified or referred to in paragraph 10 of the bill of complaint; it denies that the Interstate Commerce Commission has no power or authority over purely intrastate commerce as such, where such commerce is related to interstate commerce; it denies that no evidence was introduced before the said Commission showing or tending to show that the continued operation of said branch line of railroad in [fol. 52] intrastate commerce would burden, or would cripple this defendant's other lines of railroad, or would thereby affect the utility of them, or any of them, as arteries of interstate commerce; it denies that there was no finding by said Commission that the continued operation of said branch line of railroad in intrastate commerce would burden, or would cripple this defendant's other lines of railroad, or would thereby affect the utility of said other lines or any of them, as arteries of interstate commerce; it denies that no evidence was introduced or was before said Commission showing or tending to show the present fair value of this defendant's property as a whole, or of any part or portion thereof, or that there was no finding by said Commission as to such value; it alleges that there was ample and sufficient evidence available to and availed of and taken into consideration by said Commission showing and tending to show the then present fair value of this defendant's property as a whole and of the various parts and portions thereof.

With respect to those allegations in said bill of complaint to the effect that no evidence was before the said Commission showing or tending to show the operating revenues or expenses of its intrastate business considered separately from the operating revenues and expenses of its interstate business, defendant does not admit, but denies the same, and in connection therewith avers that while there may have been no separate exhibits or set of figures adduced on the trail of the case, undertaking directly in and of themselves to show a

separation between the intrastate and interstate operating revenues and expenses, yet the evidence in the record before the Commission, taken as a whole, furnished to the said Commission all of [fol. 53] the proof and constituted all the known or ascertainable facts on said issue, and all of the testimony taken together furnished proof of a substantial character as to the amount of interstate and intrastate business over its lines of railroad, and such testimony furnished the data for reasonably ascertaining the facts as to the operating revenues and expenses of the intrastate as compared to the interstate traffic on its said lines of railroad. Defendant further avers in this connection that direct proof as to said issue was not essential to the validity, regularity or the binding effect of the said order of the said Interstate Commerce Commission authorizing the abandonment of said branch line, the facts as to such separation between interstate and intrastate commerce being neither important, relevant nor material in the determination of the issue of abandonment vel non of the said branch line of railroad.

This defendant denies that no evidence was introduced before said Commission showing or tending to show, or that there was no finding by the Commission, that this defendant is not, or was not, earning a fair, lawful and reasonable return on the present fair value of its properties used or useful in the public service; it denies that no evidence was introduced before said Commission showing or tending to show, or that there was no finding by the Commission that the defendant railway company was not, or is not, earning a fair, lawful and reasonable return on the present fair value of that portion of its plant, properties and facilities used by it in or dedicated to the service of intrastate commerce; it denies that there was no [fol. 54] evidence before or no finding by said Commission that the losses sustained, or to be sustained, in the continued operation of said branch line of railroad in intrastate commerce would or could reduce this defendant's net operating income to a point where this defendant would not be getting, or would not earn, a fair and reasonable return on its said properties; it denies that the making of said order, or the issuance of said Certificate of Public Convenience and Necessity by said Commission, authorizing the abandonment of said branch line of railroad as to intrastate commerce, is, or was, in excess of the power or authority of said Commission under the Interstate Commerce Act, and it denies that either said order or certificate is in violation in any respect whatsoever of the Interstate Commerce Act, or in contravention of the Constitution of the United States, or of the Fifth Amendment to the Constitution of the United States; it denies that said order or said Certificate of Public Convenience and Necessity are not based upon competent evidence, or upon any evidence, and it denies that said order or certificate was the result of mere conjecture, or that said order or certificate is in excess of the authority of said Commission, or will, if enforced, violate the rights of the plaintiff herein under the Interstate Commerce Act, or will violate or deny the right reserved to plaintiff under the Interstate Commerce Act, or the Constitution of the United States to regulate or control its intrastate Commerce.

11. This defendant denies that the Interstate Commerce Commission, in making or in issuing said order or Certificate of Public Con- [fol. 55] venience and Necessity, exceeded the power or authority delegated to it by the Interstate Commerce Act, or that the Commission erred as a matter of law in any of the particulars specified in paragraph 11 of the bill of complaint.

12. This defendant denies that said order or Certificate of Public Convenience and Necessity of the Interstate Commerce Commission is in any respect whatsoever arbitrary, illegal or void, or beyond the power or authority of said Commission to make or violative of any contractual or constitutional rights of the plaintiff, or that it deprives or will deprive the plaintiff, or any of its citizens, of any property or rights whatsoever, without due process of law; it denies that said order or certificate is unreasonable or confiscatory or contrary to the evidence submitted to said Commission, or not supported or warranted by the evidence submitted to said Commission, or is not based upon or supported by sufficient findings of fact by the Commission to authorize the abandonment of said branch line of railroad as to intrastate commerce, or in any other respect.

13. It admits that unless restrained or enjoined by this court, it will proceed to comply with and carry out said order or Certificate of Public Convenience and Necessity of the Interstate Commerce Commission, dated February 11, 1924, and will abandon said branch line of railroad, as to intrastate commerce, as well as interstate and foreign commerce, and will remove the tracks and structures thereof, and will refuse to continue to operate same in intrastate commerce; [fol. 56] it denies that the plaintiff, or any of its citizens or industries or people, will suffer great or irreparable injury or damage, or that any homes or industries located along said branch line of railroad will be thereby rendered useless or valueless; it denies that the plaintiff has, or any of its citizens or industries have, no adequate remedy at law for the redress of any legal injuries which may be inflicted upon it, or them, by the enforcement or carrying out of said order or Certificate of Public Convenience or Necessity; it denies that it is necessary for the protection of the plaintiff or of any of its citizens or property, that equity should intervene with the power of injunction, or that a preliminary or a permanent injunction should be granted against the enforcement of said order or Certificate of Public Convenience and Necessity, or against the removal of the track of said branch line of railroad, or the withdrawal thereof from the service of intrastate commerce.

14. This defendant admits that it has not at any time, or in any way, sought, asked or obtained the consent of the State of Colorado, or of the Public Utilities Commission of the State of Colorado for the abandonment of said branch line of railroad as to intrastate commerce, and that the State of Colorado has not consented to such abandonment.

15. Further answering said bill of complaint this defendant alleges that during the course of said proceedings before the Interstate

Commerce Commission, in its said "Finance Docket No. 1572," and on or about July 28, 1922, it handed down a report and entered an order, since reported in Volume 72 of the Reports of the Interstate [fol. 57] Commerce Commission, beginning at page 315, being in words and figures in substance as follows, to-wit:

"Report of the Commission

"Division 4, Commissioners Meyer, Eastman, and Potter

By Division 4:

"The Colorado & Southern Railway Company, a carrier by railroad subject to the interstate commerce act, on September 1, 1921, filed an application for a certificate of public convenience and necessity, pursuant to paragraph (18) of section 1 of the interstate commerce act, authorizing it to abandon its Buena Vista-Romley branch, which is located wholly in Chaffee County, Colorado. Intervening petitions, protesting against the proposed abandonment, were filed by the town of St. Elmo, the Flora Bell Mining Company, the Mary Murphy Gold Mining Company, the Board of County Commissioners of Chaffee County, and the town of Buena Vista. A hearing was held upon notice to interested parties. The matters of record were made the subject of a proposed report by an Examiner, to which report exceptions were filed by the applicant, and the case was argued orally by the parties.

"Prior to the hearing the state of Colorado, by its Public Utilities Commission, filed a motion to dismiss the proceeding on the ground that the applicant's railroad is located wholly within the State of Colorado and therefore we have no jurisdiction to authorize its abandonment, and a hearing was held thereon. This motion was renewed at the main hearing, and like motions were made on behalf [fol. 58] of certain of the intervening protestants. While the branch line lies entirely within the State of Colorado, it constitutes a part of applicant's system, its operating results are reflected in the accounts of the applicant, and the latter would be required to bear or make good any deficits from its operation. We are therefore of opinion that we have jurisdiction.

"The branch line in question extends from Buena Vista in a southerly and westerly direction to Romley, and includes certain trackage extending westerly from Romley to the Flora Bell Mine and Hancock, a total distance of 29.42 miles. It has no connection with any of applicant's other operated lines. Its eastern terminus at Buena Vista is approximately 29 miles southwest of Garos, Park County, Colo., through which point applicant's nearest operated line of railroad extends. This branch comprises a segment of a narrow-gauge line of railroad which was constructed during the years 1874 to 1882 from Denver, across the continental divide by means of the Alpine tunnel, to Gunnison and the Gunnison County coal fields. This railroad was continuously operated until 1910. At that time the line between Garos and Macune, a

distance of 28.84 miles, and between Hancock and Quartz, a distance of 13.57 miles, including the Alpine tunnel, was abandoned, and operation thereover has never been resumed. A large part of the abandoned track has been washed out and destroyed. Operation of that portion of the line from Quartz to its western terminus was taken over by the Denver & Rio Grande Railroad Company and has since been and is now being operated as a part of that Company's system, with the exception of that portion thereof which [fol. 59] parallels the Denver & Rio Grande railroad between Parlins and Gunnison, a distance of 11.64 miles, which portion has also been abandoned and parts thereof destroyed. The applicant acquired ownership of the line in 1898. It has continued to operate the branch in question from Buena Vista to Romley for the purpose of furnishing transportation facilities for certain communities, mining camps and mines located in the mountains west of Buena Vista and east of the continental divide. The track is laid with 40-pound to 56-pound rail and the maximum grade is 4 per cent. The present service consists of a mixed train which makes the round trip three days a week. The equipment consists of one locomotive, one combination baggage car and passenger coach, and a few box, coal and flat cars.

"The territory traversed by the branch is described as extremely rugged and mountainous. The principal industry is mining, but there has been a small agricultural and lumbering development. The only town of importance served by the branch is Buena Vista, with a population of 903. This town is also served by the Denver & Rio Grande railroad. There are several small communities along the line which are not served by any other railroad. The distances from these points to another railroad range from 5.4 to 21.29 miles. The population of the territory tributary, including the population of Buena Vista, is estimated by the applicant at 993.

"This line serves a metalliferous mining section. There are a number of mines located on the road and dependent upon it for transportation. It is stated that the Mary Murphy mine represents [fol. 60] an investment of approximately $2,000,000, that it has erected a mill at an expense of $160,000 and has spent other large sums on permanent improvements. Ore to a value in excess of $2,000,000 has been taken from its upper levels. At the time this mine was in full operation it employed from 175 to 200 men. Some small operations are being conducted at this mine at the present time and considerable development work was done in 1920 and 1921. The owners of the Flora Bell mine have expended $92,000 in development work and have erected a mill at a cost of $50,000. Testimony was offered to the effect that this mine is about ready to begin shipments on a fairly extensive scale. Over $80,000 has been expended in development work by the Colorado Silver Mines Company, which has a large body of ore in sight and blocked out. The owners of the Rarus-Warrior mine have expended $14,000 in development. It is testified that within the six weeks preceding the hearing a promising body of ore was opened in this mine and that it would be in a position to begin shipping in a small way by May 1. The

ores from this mining district are described as complex, and contain silver, lead, zinc and a small amount of gold. When the mill at the Mary Murphy mine is operating its concentrates are shipped to Eastern distillation plants for treatment and then shipped back to Colorado for smelting. The oxidized or partly oxidized ores are shipped to the smelter at Leadville for treatment. The owner of a granite quarry located on the line testified that he was deterred from beginning operations because of the published notice of the application for abandonment, and that if the railroad were main- [fol. 61] tained he would start work within 60 days. On the part of the protestants it is asserted that the abandonment of the line would result in a loss of their entire investment and the abandonment of the whole district, as no other practical means of transport is available. A wagon road extends from Buena Vista to Romley, paralleling the railroad for a portion of the distance. Some testimony was offered as to the feasibility of utilizing this wagon road for the purpose of hauling ores to the Denver and Rio Grande railroad and transporting inbound supplies. It appears that this road is impassable during the winter months, and from the whole testimony the conclusion appears warranted that the economic hauling of ores and supplies over this wagon road would be impossible. The applicant contends that the abandoned railroad grade would constitute a suitable highway over which to haul ores and supplies by tractors, and that such means of transport is now being employed in other parts of the state. A dealer in tractors testified that ores could be hauled from Romley to the railroad at Nathrop at an estimated cost of $1.37 per ton, by the use of a 10-ton tractor and three 10-ton trailers. This estimate was based on the summer months and did not take into consideration any tonnage on the inbound trip. It does not appear from the record that the applicant owns the right of way. Assuming that the abandoned railroad grade would be available for such purpose, it is apparent that it would require a large expenditure in order to construct a road upon it capable of withstanding the impact of such heavy loads.

"A statement submitted by the applicant covering operations of the branch line from January 1, 1916, to November 30, 1921 [fol. 62] shows: Operating revenues, $80,603.50; operating expenses, $185,912.74; taxes, $106,716.87; interest, $145,550; total deficit $357,576.11. It thus appears that over 70 per cent of the total deficit consists of charges to interest and taxes. The branch line is subject to applicant's first mortgage, under which bonds to the principal amount of $19,400,000 are outstanding, and to its refunding and extension mortgage, under which bonds are outstanding to the principal amount of $28,978,900. There are no evidences of indebtedness resting wholly upon the branch line. It thus appears that the proposed abandonment would not effect any reduction in applicant's present interest charges.

"From the testimony of a member of the Colorado Tax Commission it appears that the assessed valuations of railroad properties are based upon a full cash valuation, and that in arriving at a valuation consideration is given to the securities, earnings, and to some

extent the physical value of the properties. After the value of the whole system is ascertained, the tax is distributed over the system to the various counties in proportion to the main track miles in the county, both operated and nonoperated. No figures were available as to the actual tax valuation placed on this branch, but in the distribution of the gross value of all of applicant's property there was allocated to this branch a valuation of $31,414 a mile. This witness further testified that the valuation allocated to the branch line was not necessarily its actual value, and that if the actual value were proportionately less than the valuation of the main line the [fol. 63] taxes allocated to Chaffee County would be on a basis in excess of the value of the branch line, but would tend to reduce the taxes paid on applicant's other lines. This testimony leaves in doubt the question as to how much, if at all, applicant's tax payments would be reduced by the abandonment of this branch. However, when a part of a railway system like this branch fails to earn operating expenses, the taxing authorities, in the public interest, may well give consideration to the possibility of affording relief to the extent of their authority.

"The general balance sheet of the applicant, as of November 30, 1921, showed: capital stock, $48,000,000, of which $17,000,000 is preferred stock and $31,000,000 is common stock; unmatured funded debt $49,358,900; investment in road and equipment $79,280,888.66; profit and loss credit balance, $5,397,840.91. Net railway operating income for the five-year period from January 1, 1916, to December 31, 1920, totaled, $13,723,554. For the years 1918, 1919 and the first two months of 1920, the results shown are from operation by the United States Railroad Administration. Operations for the first 11 months of 1921 resulted in a net railway operating income of $1,869,401.

"The evidence of the applicant shows that the traffic on this line has largely decreased during the last four or five years. The testimony tends to show that this is the result of depressed conditions due to the war and that the some conditions have existed throughout the other metal mining districts of the state, with a similar result. The mill at the Mary Murphy mine was closed in 1919. [fol. 64] During the past two or three years shipments have practically been limited to ores extracted in development work. It appears that during this period of depression large sums have been spent on these mines in the expectation of continued railroad service. From the testimony of men familiar with mining conditions in Colorado it appears that some of the conditions that caused the depression in the industry have been removed, that the tendency of metal prices is upward, that improved conditions are to be expected, and that the mines along this line will be successfully worked.

"In support of its position the applicant cites our report and order in the matter of the application of R. B. Pegram, receiver of the Hawkinsville & Florida Southern Railway Company for authority to abandon that line (Finance Docket No. 1451). That application

involved the abandonment of an entire line of railroad for the reason that it appeared that it had not been and could not be operated except at a loss. It is obvious that that decision does not constitute a precedent for our action on this application, which only involves the proposed abandonment of a short branch line, comprising but a small part of applicant's total mileage.

"The abandonment of this branch would deprive a large section of the benefits of rail transportation, would end the development of the resources tributary to the line and would probably result in the abandonment of this mining district and the loss of the large investment heretofore made. While the operation of the line for the past four or five years has resulted in substantial losses, the record [fol. 65] affords some assurance that the conditions which produced that result are changing and that future operations may show a more favorable return.

"Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application. It is not in the public interest that even a strong line like the applicant should permanently operate parts of its system that do not yield revenues sufficient to pay operating expenses and interest on the net scrap value of the property. Persons directly interested in the continued operation of the line should cooperate to the fullest extent possible with the management of the road with the view of effecting more favorable operating results. The offer of the applicant to lease the line proposed to be abandoned to protestants at a rental of $5.00 per year should be given serious consideration by protestants.

"An order will be entered denying the application.

"Potter, Commissioner, not participating.

"Order

"At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office, in Washington, D. C., on the 28th Day of July, A. D. 1922

Finance Docket No. 1572

[fol. 66] Abandonment of Branch Line of Colorado & Southern Ry.

In the Matter of the Application of the Colorado & Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing it to Abandon a Branch Line of Railroad

"A hearing in this proceeding and investigation of the matters and things involved therein having been had, and said division having, on the date hereof, made and filed a report containing its

findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is ordered, That the application be, and it is hereby denied.
"By the commission, division 4:

George B. McGinty, Secretary. (Seal.)"

16. This defendant further alleges that during the course of said proceedings, and on or about September 24, 1923, said Commission handed down a further report and entered an order, since reported in Volume 82 of the Reports of said Interstate Commerce Commission beginning at page 310, being in words and figures in substance as follows, to-wit:

"Report of the Commission on Further Hearing

"Division 4, Commissioners Meyer, Eastman, and Potter

"By Division 4:

[fol. 67] "By our report and order in this proceeding issued July 28, 1922, 72 I. C. C. 315, we denied the application of the Colorado & Southern Railway Company for authority to abandon its branch line extending from Buena Vista to Romley, in Chaffee County, Colo., including certain trackage extending westerly from Romley, a total distance of 29.42 miles. In our report we said:

'Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application.'

"On May 19, 1923, the applicant filed a petition praying that the case be reopened and set for further hearing. This petition was granted and a further hearing was held at Denver, Colo., on July 13 and 14, 1923.

"The record made at the further hearing clearly establishes that the improvement in operating results anticipated by the protestants at the first hearing has not materialized, and that the operation of the line since the original application was filed has resulted in a large deficit. For the year 1922, operating revenues were $5,813.91; operating expenses $30,654.28; taxes, $28,838.42. For the first five months of 1923 operating revenues were $1,788.18; operating ex-
[fol. 68] penses, $15,401.79; taxes $12,016.01. The total tonnage transported in 1922 was 1,865 tons, and in the first five months of 1923, 357 tons. In the latter part of 1922 the rate on ore to the smelter at Leadville was reduced approximately 50 cents a ton, in an endeavor to increase the traffic.

"The protestants assert that the past winter was unusually severe; that the railroad shopmen's strike made it impossible to secure shipments of coal; that mine owners and operators were deterred from

investing money in their properties because of the statements in our report hereinabove set forth; and that because of all these circumstances a reasonable time has not elapsed since our order was entered in which to determine whether the results of operation are likely to show improvement. It is claimed that conditions in the mining industry are and have been abnormal. Considerable reliance is placed upon the alleged discovery of a new process for treating and separating complex ores, which it is hoped will enable mine owners in this district to ship ores which cannot now be mined profitably, and thus result in increasing the traffic over this line. It is further contended by the protestants that the proposed abandonment is not within the applicant's charter powers; and that paragraphs 18 to 21 inclusive, of section 1 of the transportation act are unconstitutional in so far as they may attempt to confer exclusive jurisdiction upon this commission to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado.

"The case of Texas v. Eastern Texas R. R. Co., et al 258 U. S. 204, is cited in support of the last proposition. In our opinion the [fol. 69] conclusion therein reached does not apply to the facts in the present case. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation.

"The case for the protestants rests largely upon optimistic predictions and hopes. The record shows that for many years the operation of this branch line has caused the applicant a large annual loss. No definite evidence is submitted upon which a conclusion could be based as to when, if ever, sufficient traffic could be developed to pay the costs of operation. At the further hearing the applicant renewed its offer to lease the line to the protestants at a rental of $5 per year, provided they would operate it in its present condition, or to sell it to them for its scrap value.

"Upon the facts presented we find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. A certificate to that effect will be issued.

"Commissioner Eastman did not participate in the disposition of this case.

Certificate of Public Convenience and Necessity

"At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office, in Washington, D. C., on the 24th Day of September, A. D. 1923.

Finance Docket No. 1572

[fol. 70] "Abandonment of Branch by Colorado & Southern Ry.

In the Matter of the Application of the Colorado & Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing It to Abandon a Branch Line of Railroad.

"A further hearing and investigation of the matters and things involved in this proceeding having been had, and said division hav-

ing, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is hereby certified, That the present and future public convenience and necessity permit the abandonment by the Colorado & Southern Railway Company of the branch line of railroad in Chaffee County, Colo., described in the application and report aforesaid.

"It is ordered, That the Colorado & Southern Railway Company, when filing schedules canceling tariffs applicable on said branch line of railroad, shall in such schedules make specific reference to this certificate by title, date, and docket number.

"By the commission, division 4.

George B. McGinty, Secretary. (Seal.)"

17. That subsequently, and on or about February 11, 1924, said Interstate Commerce Commission handed down a further report and entered and issued its order and certificate of Public Convenience [fol. 71] and Necessity, a copy of which is attached to the bill of complaint, filed herein, being Exhibit "A" in said bill of complaint referred to. Thereby the said proceedings aforesaid resulted in a valid and binding order of the Interstate Commerce Commission, based on substantial and sufficient evidence as to all of the issues, authorizing and empowering this defendant to abandon the said line of railroad, as to foreign, interstate and intrastate commerce.

18. This defendant further alleges that it has continuously operated said narrow gauge branch line of railroad since the issuance by the Interstate Commerce Commission of its said Certificate of Public Convenience and necessity on February 11, 1924, and that as a result of said operations during the period from February 11th to July 30th, 1924, it has sustained in so operating said branch line of railroad, an operating deficit, exclusive of taxes, of $10,417.21; that during said period the operating revenues which have accrued to this defendant from the operation of said branch line of railroad have been $1,406.37; the operating expenses thereof have been $11,823.58; and the general taxes accruing thereon have been $10,372.10; and the general taxes accruing thereon have been $10,372.10; that from June 1, 1923, to June 30, 1924, the operating revenues which have accrued to this defendant from the operation of said branch line of railroad have been $4,269.11; the operating expenses incurred by this defendant in the operation thereof have been $33,840.34; and the general taxes which have accrued thereon have been $26,479.16; that from January 1, 1916, to June 30, 1924, the operating results of said branch line of railroad have been as follows:

[fol. 72]

	Operating revenues	Operating expenses	Operating deficit	Taxes	Net railway operating deficit
1916	$25,507.68	$25,520.55	$12.87	$14,230.59	$14,243.46
1917	17,830.53	25,185.04	7,354.51	17,903.30	25,257.81
1918	13,890.21	33,602.75	19,712.54	16,250.87	35,963.41
1919	9,983.38	33,846.32	23,862.94	20,017.97	43,880.91
1920	7,231.79	36,227.35	28,995.56	22,730.41	51,725.97
1921	6,448.56	35,746.96	29,298.40	25,256.78	54,555.18
1922	5,813.91	30,654.28	24,840.37	28,838.42	53,678.79
1923	4,269.11	33,840.34	29,571.23	26,479.16	56,050.39
To June 30, 1924	1,878.43	15,169.51	13,291.08	13,239.53	26,530.61
Total	92,853.60	269,793.10	176,939.50	184,947.03	361,886.53

19. That, complying with the request or suggestion of the plaintiff herein, the Interstate Commerce Commission postponed the effective date of its said Certificate of Public Convenience and Necessity, issued on February 11, 1924, for a period of six months from and after the date of the issuance thereof, i. e., until August 11, 1924; that ample time was thereby afforded the plaintiff herein to initiate proceedings for the testing of the constitutionality and validity thereof, and for the inhabitants and industries, located along said branch line of railroad to remove from, or bring into the territory served by said branch line of railroad, such property as they might so desire; that no effort or attempt whatsoever has been made by the plaintiff, or by any of the protestants in said proceedings before the Interstate Commerce Commission to lease or to buy said branch line of railroad from this defendant with a view of its independent operation, as [fol. 73] suggested by said Interstate Commerce Commission; that in view of the fact that the plaintiff waited until July 16, 1924, before filing the bill of complaint herein, or taking other steps for the purpose of postponing the effective date of said Certificate of Public Convenience and Necessity, it would now be altogether inequitable and unjust and unreasonable for this Honorable Court, by order entered herein, to enjoin or otherwise suspend the enforcement or carrying out by this defendant of said Certificate of Public Convenience and Necessity.

Wherefore, this defendant having fully answered said bill of complaint, prays that said bill of complaint be dismissed; that judgment be entered herein in favor of this defendant, for its costs, and that it be granted such other and further relief as to the Court shall seem proper, meet and equitable in the premises.

J. H. Barwise, Jr., J. Q. Dier, Solicitors for Defendant, The Colorado and Southern Railway Company. Bruce Scott, Kenneth F. Burgess, of Counsel.

[fol. 74] Sworn to by John Q. Dier. Jurat omitted in printing.

[fol. 75] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed Aug. 11, 1924

United States of America, defendant, for answer to the petition filed herein against it, says:

1, 2, 3. Defendant admits the allegations of paragraphs 1, 2 and 3 and each and every part of the same, in manner and form as alleged.

4, 5, 6. Defendant has no knowledge of the matters and things alleged in paragraphs 4, 5, and 6, it neither admits nor denies

the same and in so far as they may become material upon the hear-
[fol. 76] ing it will require strict proof thereof, with these exceptions: (a) Defendant admits that The Colorado and Southern Railway Company owns, maintains and operates a line of railroad approximately twenty-nine and one-half (29½) miles in length which extends from Buena Vista to the towns of Romley, St. Elmo and Hancock, all entirely within Chaffee County, Colorado; (b) that such line is not and for approximately fourteen years has not been a part of any other line; (c) defendant specifically denies that the continued operation of said line in intrastate commerce is a matter of local concern only and will not burden or cripple any other line of railroad of The Colorado and Southern Railway Company so as to affect its utility or service as an artery of interstate and foreign commerce, or at all.

7, 8. Defendant admits the matters and things alleged in paragraphs 7 and 8 and each and every part of the same, in manner and form as alleged, with this reservation: Defendant alleges that the report and order of the Commission, dated February 11, 1924, a copy of which is attached to the petition and marked "Exhibit A to the complaint," was preceded by two other reports, dated, respectively, September 24, 1923, and July 28, 1922, and reported, respectively, in Volume LXXXII Interstate Commerce Commission Reports, page 310, and in Volume LXXII Interstate Commerce Commission Reports, page 315. Each and all of the three reports were styled "Abandonment of Branch Line of Colorado and Southern Railway." Copies of the two last mentioned reports will be offered and filed upon the hearing hereof.

9. Defendant admits the allegations of paragraph 9 and each and every part of the same, in manner and form as alleged.

[fol. 77] 10. Defendant specifically denies the matters and things alleged in paragraph 10 and each and every part of the same, in manner and form as alleged. It alleges that the matters and things alleged in paragraph 10 and sought to be put in issue before the court were all before the Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act. In its report in writing with respect thereto, made after full hearing and on due notice to all of the parties, which states its conclusion, together with its decision, order, or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues made by the parties.

11, 12. Defendant specifically denies the matters and things alleged in paragraphs 11 and 12 and each and every part of the same, in manner and form as alleged.

13, 14. Defendant has no knowledge of the matters and things alleged in paragraphs 13 and 14 in manner and form as alleged, and in so far as the same become material upon the hearing it will require strict proof thereof.

Defendant denies each and every allegation in the petition contained not herein specifically admitted or denied.

Further answering the petition defendant alleges that all of the matters and things alleged in the petition and sought to be put in issue before the court were all before the Commission, were fully [fols. 78 & 79] heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act. In its three reports in writing with respect thereto, hereinbefore referred to, made after full hearings and on due notice to all of the parties, which three reports state its conclusion, together with its decision, order, or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues raised by the parties.

Wherefore, having fully answered, defendant prays that the petition be dismissed at the cost of the plaintiff and for such other and further relief and order as may be appropriate.

Blackburn Esterline, Assistant to the Solicitor General.
George Stephan, United States Attorney.

Sworn to by Blackburn Esterline. Jurat omitted in printing.

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—July 23, 1924

This day this cause come on for final hearing and was argued by counsel and submitted to the Court; wherefore, upon consideration thereof, it is now by the Court ordered, adjudged and decreed as follow, to wit:

First. That the prayer of the petition for preliminary and permanent injunctions be, and the same is hereby denied.

Second. That the petition be, and the same is hereby, dismissed at the cost of the plaintiff.

Third. That the motion of the plaintiff for a stay of the order of the Interstate Commerce Commission pending appeal be, and the same is hereby, denied.

(To which order or decree of the Court and each and every part of the same the plaintiff by its counsel objected and excepted.)

[File endorsement omitted.]

[fol. 81] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed Sept. 18, 1924

The above named plaintiff, conceiving itself aggrieved by the decree and order made and entered on the 19th day of August, 1924, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Wayne C. Williams, Attorney General of the State of Colorado; Riley R. Cloud, Assistant Attorney General; Barney L. Whatley, Attorneys & Solicitors for Plaintiff.

Dated this Oct. 10th, A. D. 1924.

The foregoing claim of appeal is allowed.

Robt. E. Lewis, Circuit Judge.

[fol. 82] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Sept. 18, 1924

And now, on the 18th day of September, A. D. 1924, came the plaintiff, by Wayne C. Williams, Riley R. Cloud and Barney L. Whatley, its solicitors, and says that the decree and order in said cause are, and that each of them is, erroneous and against the just rights of said plaintiff, for the following reasons:

First. The Court erred in holding that the order of the Interstate Commerce Commission dated February 11, 1924, purporting to authorize the defendant, The Colorado & Southern Railway Company, to abandon its line of railroad in Chaffee County, Colorado as to intrastate business, was and is a valid and lawful order and within the power of said Commission to make, and that said order was and [fol. 83] is supported and justified by the evidence;

Second. The court erred in not suspending and setting aside the said order of said Commission in so far as the same authorized the abandonment of said line of railroad as to purely intrastate business.

Third: The Court erred in holding that it is within the power and authority of the Interstate Commerce Commission to authorize

the Colorado & Southern Railway Company to abandon, as to intrastate business, without the consent of the State, a portion of one of its lines of railroad located wholly within the State of Colorado, while the said Railway Company continues to hold, exercise and enjoy the charter rights, powers and privileges granted to it by the State of Colorado.

Fourth. The Court erred in holding that there was no duty on the said Commission in this case to separate and separately consider the intrastate business, property, revenues and expenses of said Railway Company, from its interstate business, property, revenues and expenses.

Fifth. The Court erred in holding that the Interstate Commerce Commission made in this case essential finding to support its order.

Sixth. The Court erred in holding that the essential findings of the Commission in this case are supported by competent evidence.

Seventh. The Court erred in holding that there was a finding by the Commission based upon competent evidence that the continued operation of the said line of railroad in purely intrastate business [fol. 84] would put a substantial burden on interstate and foreign commerce, or would so cripple the other lines of said company as to affect their utility and service as arteries of interstate and foreign commerce.

Eighth. The Court erred in holding that the order of the Commission in this case is not arbitrary, illegal, void and beyond the power and authority of said Commission to make, in so far as said order authorizes the abandonment of said line of railroad as to purely intrastate business.

Ninth. The Court erred in refusing the application of plaintiff for an order suspending the order of the Commission pending appeal.

Tenth. The Court erred in dismissing the Bill of Complaint.

The plaintiff prays that the order of the Commission authorizing the abandonment of said line of railroad as to intrastate business may be suspended pending the appeal.

Wayne C. Williams, Attorney General of Colorado; Riley R. Cloud, Assistant Attorney General; Barney L. Whatley, Plaintiff's Attorneys and Solicitors.

[fol. 85] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept. 18, 1924

To Honorable Charles W. Bishop, Clerk of the United States District Court for the District of Colorado:

In the above matter, you will please prepare a transcript of the record on appeal and include therein the following:

1. The Petition and Bill of Complaint;
2. The Answer of the United States of America;
3. The Answer of the Interstate Commerce Commission;
4. The Answer of the Colorado & Southern Railway Company;
5. Statement of the Evidence in condensed form;
6. The order and decree of the court;

[fol. 86] 7. Prayer for appeal and order allowing same.

8. Assignment of errors.

Respectfully, Wayne C. Williams, Attorney General of Colorado; Riley R. Cloud, Assistant Attorney General; Barney L. Whatley, Plaintiff's Attorneys and Solicitors.

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 87] ORDER APPROVING STATEMENT OF EVIDENCE AND TO TRANSMIT ORIGINAL EXHIBITS—Oct. 13, 1924

The statement of evidence in this case on the bill and the separate answers of the several defendants, having been duly lodged in the office of the Clerk of this Court by appellant, the State of Colorado, and The United States of America, The Interstate Commerce Commission and The Colorado and Southern Railway Company having made their objections and amendments to said statement of evidence and the same having been satisfactorily adjusted and settled by agreement of the parties, said statement of evidence on the appeal of the State of Colorado is hereby approved by the Court.

It further appearing to the Court that it is proper and necessary that those certain maps, being sixteen in number, which are attached to the Return to Questionnaire in response to Question No. 21, and which consist of one route map and fifteen right-of-way and track maps numbered V. Colo. 15, 1 to 15, inclusive; also the profile map known as Exhibit No. 12 before the Interstate Commerce Commission, all of which said maps are referred to in the statement of evidence, should be inspected by the United States Supreme Court in their original form, it is Hereby Ordered that said maps be trans-

mitted by the clerk to said Court in original form in connection with the statement of evidence and transcript, and that said maps need not be printed as part of the record herein.

[fol. 88] [Title omitted]

[fol. 89] IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence—Filed Oct. 13, 1924

CAPTION

Be it remembered, That on, to-wit, Monday, the eighteenth day of August, A. D. 1924, the same being one of the regular juridical days of the May, 1924, term of said Court, the above entitled cause came on for trial before Honorable Robert E. Lewis, one of the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, and Honorable J. Foster Symes, Judge of the United States District Court for the District of Colorado, and Honorable O. L. [fol. 90] Phillips, one of the Judges of the United States District Court for the District of New Mexico, upon the application of the plaintiff for a temporary restraining order, temporary injunction, and final or permanent injunction and order restraining, suspending and setting aside the orders of the Interstate Commerce Commission complained of in the Bill of Complaint herein, said hearing being pursuant to notice regularly given and served as by statute in such cases made and provided upon all defendants, the plaintiff appearing by its solicitors, Riley R. Cloud, Esquire, its Assistant Attorney General, and by Barney L. Whatley, Esquire, its special counsel, and the United States of America appearing by its solicitor, Blackburn Esterline, Esquire, Assistant to the Solicitor General, and the defendant the Interstate Commerce Commission appearing by its solicitor, R. Granville Curry, Esquire, its assistant counsel, and the defendant, The Colorado & Southern Railway Company, appearing by Bruce Scott, Kenneth F. Burgess, J. Q. Dier, and J. H. Barwise, Jr., its solicitors.

All parties announced in open court that they were ready to proceed.

Whereupon, the following proceedings were had:

To maintain the issues on behalf of the plaintiff herein raised by the pleadings, the plaintiff offered, and the court duly received, in evidence, without objection, Plaintiff's Exhibit "A," same being a certified copy of all the records, papers, evidence and exhibits as filed with, taken before and exhibited to, the Interstate Commerce Commission in the course of the proceedings before said Commission. [fol. 91] A transcript of said Exhibit "A," excluding the formal and immaterial parts, is as follows:

Transcript of Exhibit "A"

1. Certificate under the hand and seal of the Secretary of the Interstate Commerce Commission, dated August 13, 1924, certifying the record in due and regular form.

2. Application of The Colorado and Southern Railway Company filed with the Interstate Commerce Commission on September 1, 1921, as follows:

'Before the Interstate Commerce Commission

Finance Docket No. 1572

In the Matter of the Application of The Colorado and Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of its Buena Vista-Romley Line of Railroad.

Comes now The Colorado and Southern Railway Company and respectfully presents the following application for the issuance by the Interstate Commerce Commission of a certificate of public convenience and necessity under paragraphs 18-22, inclusive, of Section 1 of the Interstate Commerce Act, as amended by the Transportation Act, 1920, authorizing the abandonment by it of that certain line of railroad hereinafter described, commonly known and designated as its Buena Vista-Romley Branch, and in support hereof shows unto the Commission:

1. That its exact corporate name is The Colorado and Southern Railway Company.

2. That it is a carrier by railroad subject to the Interstate Commerce Act.

3. That said line of railroad is a narrow gauge line of railroad extending through an extremely rugged and mountainous territory from the town of Buena Vista in a southerly and westerly direction to the station of Romley, including trackage extending westerly from Romley to the Flora Belle mine and Hancock, and being approximately 29.42 miles in length, located wholly within Chaffee County, State of Colorado.

[fol. 92] 4. That your petitioner is desirous of totally abandoning said line of railroad and removing said track.

5. That said line of railroad is not being operated by a receiver.

6. That said line of railroad is isolated from and has no connection with any of its other operated lines of railroad, said terminus at Buena Vista being located approximately 29 miles westerly from Garos, Park County, Colorado, through which point its nearest operated line of railroad is located; that said line of railroad was formerly a part of a narrow gauge line of railroad extending from Garos to

Romley, and thence through the Alpine Tunnel to Baldwin, Gunnison County, Colorado; that in 1910 various portions of said last mentioned line of railroad were washed out and destroyed by floods, particularly between Garos and Macune (a point near Buena Vista) and between Hancock, a point located easterly of the Continental Divide, and Quartz, a point located westerly of the Continental Divide, including said Alpine Tunnel, and thereupon such washed-out and destroyed portions of said line of railroad were abandoned and operation thereover never resumed; that your petitioner continued to operate, however, that portion of said line of railroad extending from Buena Vista to Romley for the purpose of affording transportation facilities to and from certain metalliferous mines located in the mountains westerly of Buena Vista; that practically all of such mines are now and for a long time past have been closed, and are not being and for a long time past have not been operated, with the result that said line of railroad extending from Buena Vista to Romley, as aforesaid, for many years last past has not been able to earn, and is not earning, its operating expenses; that so far as can be ascertained after diligent inquiry and investigation there is no prospect of a reopening of said mines; that during recent years the deficit sustained from the operation of said line of railroad has been increasingly heavy, amounting, including taxes, during the year 1919 to $43,677.67 and during the year 1920 to $51,666.26; that the deficit sustained from the operation of said line of railroad for the first six months of 1921, including taxes, amounts to $24,152.04.

7. That correspondence in regard to this application should be addressed to E. E. Whitted, General Solicitor, 434 Railway Exchange Building, Denver, Colorado.

8. That your petitioner is a corporation duly organized under the laws of the State of Colorado; your petitioner is also authorized to operate lines of railroad in the States of Wyoming and New Mexico.

9. That the making and filing of this application was duly authorized, directed and approved at a meeting of your petitioner's Board of Directors held in the City of New York, New York, on the 15th day of April, 1921.

10. That your petitioner desires a hearing upon this application.

The Colorado and Southern Railway Company, by Robert Rice, its Vice-President and General Manager.

[fol. 93] STATE OF COLORADO,
City and County of Denver, ss:

Robert Rice, of lawful age, being first duly sworn upon his oath, deposes and says:

That affiant is the Vice President and General Manager of the Colorado and Southern Railway Company; that affiant has read and is familiar with the contents of the foregoing application signed by affiant on behalf of the Colorado and Southern Railway Company;

that affiant is an executive officer of the Colorado and Southern Railway Company, and has knowledge of the matters and things set forth in said application, and has been duly designated and authorized by the Board of Directors of the Colorado and Southern Railway Company to make, verify, and file said application; that the matters and things in said application set forth are true to the best of affiant's knowledge, information and belief.

Robt. Rice.

Subscribed and sworn to before me this 27th day of August, A. D. 1921. My commission expires October 18, 1922. Jno. F. Brent, Notary Public." (Seal.)

3. Copy of Order by the Commission dated October 26, 1921, in Finance Docket No. 1572, which, omitting title, etc., is as follows:

"Order Permitting Intervention

"Upon consideration of the record in the above entitled proceeding and petition filed on behalf of the Town of St. Elmo, Colorado, for leave to intervene herein;

It is ordered, that the said The Town of St. Elmo, Colorado, be, and it is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, that a copy of the intervening petition and of this order be sent by registered mail to the Governor of the State of Colorado and the Public Utilities Commission of the State of Colorado; that a copy of the intervening petition be served upon applicant; and that a copy of this order be served upon each of the parties to this proceeding.

By the Commission:

George B. McGinty, Secretary." (Seal.)

[fol. 94] 4. Copy of Petition of the Town of St. Elmo, Colorado, which, omitting title is as follows:

"Comes now your petitioner, the Town of St. Elmo, Colorado, and respectfully represents it has an interest in the matters in controversy in the above entitled proceedings and desires to intervene in and become a party to said proceedings, and for grounds of the proposed intervention, says:

I

That petitioner is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Colorado for the convenience, comfort, welfare and regulation of its citizens, present and prospective, and that its place of business is St. Elmo, Colorado;

II

That petitioner is interested in the above entitled proceeding in the following respects and particulars, to-wit:

(a) The said line of railroad is the only line of railroad extending to or in any way serving petitioner and its citizens, and if the Railway Company is permitted to abandon same, petitioner, its citizens and inhabitants, industries and businesses will be left wholly and absolutely without railroad or transportation service of any kind, to its great and irreparable injury, damage and inconvenience.

(b) If said line of railroad is abandoned, it will leave a large section of the State of Colorado wholly without transportation facilities and will ruin the industries and destroy the business not only within the corporate limits of petitioner, but in all the surrounding and adjacent territory from which petitioner draws and secures business of various kinds.

Petitioner further respectfully states its position with reference to the above entitled matter and protests the jurisdiction of this Commission therein as follows, to-wit:

(1) That this line of railroad is located and operated wholly within the State of Colorado, and wholly within one County of the State of Colorado, and as such is not subject to the jurisdiction of this Commission.

(2) That this line of railroad has no physical connection with any other line of railroad operated by the Colorado and Southern Railway Company and that the said Company does not operate, and for many years has not operated, all of this line, but has only operated a portion thereof with an absolute minimum service for several years.

[fol. 95] (3) That the said The Colorado and Southern Railway Company is chartered in the State of Colorado to operate various lines of railroad in said State, is operating various lines, including the line involved herein, and that upon its operations as a whole, it is making a fair return upon its investment and should not now be allowed to keep its charter and at the same time refuse service.

(4) That the public convenience and necessity requires the continued operation of this line of railroad from Buena Vista, Colorado, to Hancock, Colorado, and the whole section of the State of Colorado traversed by this line of railroad, and solely dependent thereon for transportation facilities, will be ruined and all the money invested in various businesses in said section of the State will be absolutely lost, and that the saving to said railway company, if any, will be inconsequential and insignificant as compared to the losses sustained by the people and industries along and dependent upon said line.

Wherefore, said Town of St. Elmo prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine

witnesses, and be heard in person or by counsel upon a brief and at the oral argument, if oral argument is granted.

Dated at St. Elmo, Colorado, this, the 14th day of October, A. D. 1921.

The Town of St. Elmo, Colorado, by Daniel Clark, Mayor.
St. Elmo, Colorado, Barney L. Whatley, Attorney, Suite 1016-1019 Foster Building, Denver Colorado."

Attest: S. L. Taber, Town Clerk. (Seal.)

5. Copy of order by the Commission dated October 26, 1921, which, omitting title, is as follows:

"Order Permitting Intervention

"Upon consideration of the record in the above entitled proceeding and petition filed on behalf of the Flora Bell Mining Company;

It is ordered, that the said the Flora Bell Mining Company be, and it is hereby, permitted to intervene and be treated as a party hereto.

[fol. 96] It is further ordered, that a copy of the intervening petition and of this order be sent by registered mail to the Governor of the State of Colorado and the Public Utilities Commission of the State of Colorado; that a copy of the intervening petition be served upon applicant; and that a copy of this order be served upon each of the parties to this proceeding.

By the Commission:

George B. McGinty, Secretary." (Seal.)

6. Copy of Petition of the Flora Bell Mining Company, which, omitting title, is as follows:

"Comes now your petitioner, the Flora Bell Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Colorado, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceedings, and desires to intervene in and become a party to said proceedings, and for grounds of intervention, says:

First

That petitioner is a mining corporation engaged in the business of mining, milling and transporting metalliferous ores, and that its mine is located at Hancock, Colorado, on the line of railroad involved in this proceeding; and that petitioner's postoffice address is 712 Interstate Trust Building, Denver Colorado.

Second

That petitioner is interested in the above entitled proceedings in the following respects and particulars, to-wit:

That the said line of railroad is the ony line of railroad extending to, or in any way serving, petitioner and affords the only means of transportation open to your petitioner for the transportation of supplies to its mining properties, or of its ores from the mine; and that if said line of railroad is abandoned, it will absolutely ruin and destroy properties of petitioner for the reasons aforesaid.

Petitioner further respectfully states its position with reference to the above entitled matter as follows, to-wit:

I. That this line of railroad is located and operated wholly within the State of Colorado, and as such is not subject to the jurisdiction of this Commission.

II. That the said the Colorado and Southern Railway Company is chartered in the State of Colorado to operate various lines of railroad in said State, and is operating various lines of railroad in said State, [fol. 97] including the line involved herein, and that from its operations as a whole it is making a fair return upon its investment and should not be allowed to keep its charter and at the same time refuse service.

III. That petitioner has made its investment in its mining property on the faith and strength of the charter obligations of the said the Colorado and Southern Railway Company to furnish it reasonable transportation facilities, and that its whole property and investment will be lost and rendered worthless if said Railway Company is permitted to abandon said line of railroad.

IV. That the petition of said the Colorado and Southern Railway Company does not state facts sufficient to entitle it to relief in that it appears from said petition that the only ground for the proposed abandonment of said line of railroad is the fact that the company claims it is not earning a sufficient amount on the investment to pay it a fair return.

V. That the Public Convenience and Necessity requires the continued operation of this line of railroad from Buena Vista, Colorado, to Hancock, Colorado, and that your petitioner and all others residing along and dependent upon said line of railroad will be ruined and their property rendered absolutely valueless if said line of railroad is abandoned; and that a large section of the State of Colorado will be left wholly and absolutely without railroad or other transportation facilities if this line is abandoned.

Wherefore, said the Flora Belle Mining Company prays leave to intervene and be treated as a party hereto with the right to have notice of, and appear at, the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon a brief, and at the oral argument if oral argument is granted.

Dated at Denver, Colorado, this 21st day of October, A. D. 1921.

The Flora Bell Mining Company. David B. Sauve, President, Postoffice address 712 Interstate Trust Building. Barney L. Whatley, Attorney, Suite 1016-1019 Foster Building, Denver, Colorado."

Attest: S. L. Taber, Secretary. (Seal.)

[fol. 98] 7. Copy of Order of the Commission, dated October 29, 1921, which, omitting title, is as follows:

"Order Permitting Intervention

Upon consideration of the record in the above entitled proceeding and petition filed on behalf of the Mary Murphy Gold Mining Company for leave to intervene herein;

It is ordered, that the said the Mary Murphy Gold Mining Company be, and it is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, that a copy of the intervening petition and of this order be sent by registered mail to the Governor of the State of Colorado and the Public Utilities Commission of the State of Colorado; that a copy of the intervening petition be served upon applicant; and that a copy of this order be served upon each of the parties to this proceeding.

By the Commission:

George B. McGinty, Secretary." (Seal.)

8. Copy of Petition of the Mary Murphy Gold Mining Company, which, omitting title, is as follows:

"Comes now your petitioner, the Mary Murphy Gold Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Colorado, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceedings, and desires to intervene in and become a party to the said proceedings, and for grounds of intervention, says:

That the petitioner is a mining corporation whose business is the mining and milling of ores containing gold, silver, lead, zinc and copper; its mines and mill being situated at and near Romley on the railroad which is the subject of this proceeding.

That the petitioner is entirely dependent on the service of the railroad in question, there being no other means of access to its property excepting a wag*g*on road which is closed for great part of each year, and that the abandonment of the railroad will inevitably necessitate the abandonment of the mine, the loss of employment for all its employees, the loss of all the improvements which have cost a quarter of a million dollars, the irrevocable ruin of the entire property, and the depopulation of the district, which depends solely on the mines.

The petitioner further represents to your Honorable Commission [fol. 99] that it was organized in the year 1909, that its mill and aerial tramways were built in the year 1912, on the faith of specific assurances from the officers of the Railroad Company that it would continue in operation as long as the petitioner continued to operate;

That since the construction of its mill and tramway, until the fall of the year 1918, its shipments formed a large part of the revenue of

the line in question, and that, taking the year ending August 1, 1914, as a typical example (for the reason that this was the only complete year before the War began to create special economic problems which finally resulted in the temporary closing of the mill), petitioner paid to the Railway Company and its connecting roads, as follows:

For freight on coal	$ 9,937.03
For freight on crude ore	23,533.12
For freight on concentrates	20,634.05

Besides large sums paid for freight on other mining supplies. The same year petitioner expended for labor in the district served by the railway $278,137.38 and for materials (including freight) $146,792.20;

That the products made by your petitioner are of four classes, viz:

Crude ore containing gold, silver and lead.
Lead concentrates containing gold, silver and lead.
Copper concentrates containing gold, silver, lead and copper.
Zinc concentrates containing gold, silver, zinc and copper.

None of these are finished products, and only a small portion of the entire value is received by the original producer. They have to be smelted and the crude bullion shipped to the East for refining. The zinc concentrates are shipped, usually to plants in Kansas or Oklahoma, where the zinc is extracted and the residue re-shipped to lead smelters in Colorado or elsewhere, where they are reduced to bullion which is also shipped East for refining. The mine products are therefore the basis for an extensive and complicated industry which contributes to the maintenance of districts far removed from the mine;

That since 1918 the petitioner has been compelled to close its milling plant owing to adverse economic conditions caused mainly by the increase in freight rates, but production of crude ore has been continued. The increased freight rates, and a still greater increase in smelting charges which by the Smelting Companies is attributed in turn to increased freight rates burdens laid on them, has limited such shipments to high-grade ore, and has completely prevented the production of the far larger tonnage of lower-grade ores. The condition of which the applicant complains in its notice (that there is not sufficient traffic to justify continued operation) is therefore, in great measure, the result of prohibitive freight rates.

The above condition is aggravated by the practice of the Railway Company in basing its freight charges on the alleged gross value of the ore, whereby the increased smelting and freight charges are made [fol. 100] to add to the freight rates although the said gross value has no relation to the actual value of the ore, to the shipper or anybody else, but is merely a fiction to enable the Railroad Company to charge higher rates.

The the freight charges now being charged by the Railway Company and its connecting roads are excessively high, varying on the grade of ore now actually being shipped from 29 cents to 68 cents

per ton-mile; and that the insufficiency of traffic is largely caused by extravagant and discriminating freight rates which prevent the mine of petitioner and other neighboring mines from operating on a larger scale and shipping more ore; and reemploying more miners;

That the crude ore now being shipped occupies comparatively small volume, is easy to handle and not subject to loss or damage in transit; and is of a character which should entitle it to favorable freight rates;

That the high-grade ore occurs in small bodies associated with much larger quantities of lower-grade ore, and that if freight rates and other conditions permitted the mining and shipment of lower grades of ore the business of the applicant Railway Company together with that of the entire community would be greatly increased;

That the petitioner is informed and believes that the system of the Colorado & Southern Railway Company is making a fair return on the capital invested; and that it is not fair or practicable to single out for abandonment certain portions of the system, which contributes to the prosperity of the system and of the State as a whole, merely because it is supposed that such portions taken by themselves do not pay an adequate return. If any such basis were permitted, a railroad company might at any time single out any branch on its system, or any community on any branch, for utter ruin, on the pretense that it did not contribute its share towards the maintenance of the system. A railroad system is chartered as a whole, and individual communities which have grown up on the faith of the building of the railroad should not be sacrificed and ruined because conditions over which they have no control temporarily reduce the business done by them;

That the said The Colorado & Southern Railway Company instead of endeavoring to build up business on the line in question, has for many years past avowed its intention of abandoning the road, and has done all in its power to discourage and prevent new business from springing up, and is thus largely responsible for the insufficiency of traffic of which it complains;

That if this line is abandoned, a large section of the State of Colorado, amounting to over three hundred square miles with large undeveloped resources will be left entirely without railroad or other transportation facilities.

Wherefore, the said The Mary Murphy Gold Mining Company begs leave to intervene and be admitted as a party to this proceeding, with the right to have notice of, and to appear at, the taking of testimony, to produce and cross-examine witnesses, and to be heard [fol. 101] in person or by counsel, both by brief and oral argument, if oral argument is granted.

Dated at Denver, Colorado, this 12th day of October, A. D. 1921.

The Mary Murphy Gold Mining Company. (Signed) George E. Collins, President. Post Office address 307 Boston Building, Denver, Colorado."

Attest: (Signed) Harry W. Robinson, Secretary. (Seal.)

9. Order by the Commission, dated November 26, 1921, which, omitting title, is as follows:

"Order Permitting Intervention

Upon consideration of the record in the above entitled proceeding and petition filed on behalf of the Board of County Commissioners of Chaffee County, Colorado;

It is ordered, that the said The Board of County Commissioners of Chaffee County, Colorado, be, and it is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, that a copy of the intervening petition and of this order be sent by registered mail to the Governor of the State of Colorado and the Public Utilities Commission of the State of Colorado; that a copy of the intervening petition be served upon applicant; and that a copy of this order be served upon each of the parties to this proceeding.

By the Commission:

George B. McGinty, Secretary." (Seal.)

10. Copy of Petition filed by the Board of County Commissioners of Chaffee County, Colorado, which, omitting title, is as follows:

"Come now your petitioner the Board of County Commissioners of the County of Chaffee in the State of Colorado and respectfully represents that it has an interest in the matter in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed inter- [fol. 102] vention says:

1. That the County of Chaffee is an organized County within the State of Colorado, and is a body corporate and politic under the laws of the State of Colorado and that the Board of County Commissioners, Petitioner herein, is a legally organized body corporate and politic, by which the corporate powers of said County of Chaffee is exercised and that James H. Habenicht, W. L. Philbin and Mel DeWitt are the duly elected, qualified and acting Board of County Commissioners of said County.

2. That the Buena-Vista-Romley branch of the Colorado and Southern Railway Company, application for the abandonment of which has been filed herein, is located wholly within Chaffee County, Colorado; that said branch line affords transportation facilities to the people and the industries of the towns of Buena Vista, Hortense, St. Elmo and Romley and surrounding territory in Chaffee County, Colorado and to the Tincup Mining District in Gunnison County, Colorado immediately to the west of Romley.

That the assessed valuation of the property in the St. Elmo, Romley and Tincup Districts, adjacent to and served by said branch line, is now about one million dollars; that the only practical means whereby transportation facilities can be supplied to said Districts is by means of said branch line; that while a wagon road does parallel said branch line from Buena Vista to Romley said road traverses, for a large part of the distance, a rough and mountainous territory;

that a large portion of said road is impassable on account of deep snows for several months of the year and is unfit for use in hauling the low valued products now transported to and from St. Elmo and Romley at all times; that St. Elmo, Romley and Tincup Districts lie at very high altitudes and the coal and other supplies necessary for said Districts cannot be economically transported by any other means than said branch line; that the principal freight shipped from said Districts are ores and timber products; that said mining Districts contain large and valuable bodies of ore which is now only partially developed and there are extensive forests, mostly belonging to the United States Government accessible to said branch line; that said ore bodies will soon be developed by mining operations now contemplated and employment will thereby be furnished to a large number of people and freight shipped over said branch line will greatly increase; that if said branch line is abandoned it will necessarily mean that all industries of said districts will cease without possibility of revival; that the loss of said industries will necessarily destroy all property values within several miles of St. Elmo and Romley and will indirectly reduce the values of property in Buena Vista and vicinity which is one of the principal sources of supplies used in said Districts; that the reduction and loss of said property values will cripple the finances of the petitioner and of the School Districts and towns along the line of and at the termini of said branch line.

Wherefore said Petitioner, the Board of County Commissioners of Chaffee County, Colorado prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in [fol. 103] person and by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Salida, Colorado, November 8th, 1921.

The Board of County Commissioners of Chaffee County, Colorado, Buena Vista, Colorado, by Thomas A. Nevens. (Signed) Thomas A. Nevens, County Attorney, Salida Colorado."

11. Copy of order of the Commission, dated January 14, 1922, which, omitting title, is as follows:

"Order Permitting Intervention

Upon consideration of the record in the above entitled proceeding and petition filed on behalf of the Town of Buena Vista;

It is Ordered, that the said the Town of Buena Vista, be, and it is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, that a copy of the intervening petition and of this order be sent by registered mail to the Governor of the State of Colorado and the Public Utilities Commission of the State of Colorado; that a copy of the Intervening petition be sereved upon applicant; and that a copy of this order be served upon each of the parties to this proceeding.

By the Commission:

George B. McGinty, Secretary." (Seal.)

12. Copy of Petition filed with the Commission by the Town of Buena Vista, Colorado which, omitting the title, is as follows:

"Comes now your petitioner, the Town of Buena Vista, by its mayor, a municipal corporation, created, organized and existing under and by virtue of the statutes of the State of Colorado relating to the creation of cities and towns, and respectfully represents and shows that it has an interest in the matter in controversy in the above entitled proceeding and desires to intervene in, and become a party to, the said proceeding and respectfully shows to this Honorable Commission, as follows:

[fol. 104] First

That the railroad, concerning which relief is sought by the Colorado and Southern Railway Company by its application herein, begins at Buena Vista, in Chaffee County, in the State of Colorado, and ends at Romley in the same county, and is not engaged in interstate commerce, and your said petitioner, the Town of Buena Vista, respectfully avers and alleges that this Honorable Commission has no jurisdiction to hear or determine the matters involved herein or to grant the relief prayed for by the said Railroad Company, or any relief in the premises.

Second

Without waiving its plea to the jurisdiction of this Honorable Commission, this petitioner respectfully shows and avers:

(a) That the said Town of Buena Vista has, at this time a permanent population in excess of one thousand people, and there is in the immediate vicinity of, and tributary to, the said town a large population engaged in agricultural pursuits, raising all kinds of grain and vegetables for which the said town is the shipping point.

That the discontinuance of service on said railroad will cause great loss, damage and inconvenience to the people of Buena Vista and the people served by said road, including the entire Chalk Creek Mining District, and more especially the towns and mining camps of Alpine, St. Elmo, Romley and Hancock.

That the said railroad is the only means of freight, passenger and mail transportation between Buena Vista and the said mining camps.

That because of the mountainous country and high altitude the condition of the highway leading to said mining camps is such that transportation of freight by truck or motor is impracticable between Buena Vista and said mining camps, and especially so in the winter time on account of the deep snows.

That the discontinuance of service on said railroad will practically depopulate the entire Chalk Creek Mining District, comprising approximately three hundred square miles of territory, and will stop all mining and milling operations and further mine development work in the district; and will deprive the merchants of Buena Vista, and the farmers in the adjacent territory of a market to a large extent for their merchandise and farm produce.

During the last few years, on account of depressed economic and financial conditions, generally, mining in this district, as well as in other sections of the State, has greatly declined, but a revival in metal mining, in the Chalk Creek District, is already manifest, and projects are now under way for the development of several groups of mining claims in this district and adjacent to the said railroad, but discontinuance of service on said road will at once stop all further efforts in mine development work in the district, which has already produced millions of dollars in precious metals and is still in an undeveloped condition, and without railroad service will remain undeveloped and unproductive, causing great loss and injury to the [fol. 105] business and to the people of the district as well as to the farming community adjacent to the district, and to the Town of Buena Vista whose people have much business and trade with the said mining camps and with other sections of the Chalk Creek District.

(b) The Colorado and Southern Railway Company, petitioner, is the owner of, and operates, an extensive railroad system, which this petitioner is informed and believes, is now, and has during recent years paid a fair profit, and a temporary loss in operating the Buena Vista-Romley road will not affect to any appreciable degree the financial condition of said Company in the operation of its entire system.

That the said company is itself responsible for the loss of traffic and profitable business on the Beuna Vista-Romley road. The said road was originally and until a few years ago a part of a through line from Denver to the city of Gunnison and to the coal mines at Baldwin, in Gunnison County, Colorado, known as the South Park Division of the said Company's system. That about the year 1914 the Company ceased operating its said line between Buena Vista and Garo, on the east, and between Romley and Parlin on the west and diverted the traffic on said line from Baldwin and Gunnison, at Parlin, over the Denver and Rio Grande, now the Denver and Rio Grande Western, railroad, via Salida, thus depriving the people along the said South Park line, east of Parlin, from receiving coal shipments from the Baldwin coal mines, and other commodities from Gunnison and other points, except over a long detour, and also stopped all through traffic to Denver from all points west of Garo.

This petitioner is informed and believes, and upon such information and belief alleges that the said South Park line, prior to the time operations ceased between Buena Vista and Garo, and between Romley and Gunnison and Baldwin coal mines, as aforesaid, paid a profit over and above legitimate expenses; and this petitioner is informed and believes and upon such information and belief alleges that the said South Park line, if it was properly, efficiently and in good faith operated its entire distance between Gunnison, Baldwin, Buena Vista through to Denver in connection with the company's system would pay not only expenses but a fair profit.

(c) This petitioner further alleges that the Colorado and Southern Railway Company, petitioner herein, abandoned operation of the portion of its said South Park line, hereinbefore described, without

authority or permission and in violation of its duty as a common carrier.

That the distance from Buena Vista to Denver over the South Park line is 135 miles. The distance between Buena Vista and Garo, on which portion of the line operation has been abandoned, is thirty-one miles, so that, because of abandoning operation on the thirty-one mile link the only rail service between Buena Vista and Denver is over the Denver and Rio Grande Western a distance of 240 miles.

To establish the short route between Buena Vista and Denver over the South Park line it is only necessary to reestablish service between Buena Vista and Garo a distance of thirty-one miles

[fol. 106] Wherefore this petitioner prays:

First. That the application of the railway Company, petitioner, be dismissed for want of jurisdiction.

Second. If the Honorable Commission, however, holds that it has jurisdiction, in the premises, then this petitioner prays:

(a) For an order permitting it to intervene and become a party to this proceeding with the irght to have notice of, and to appear at, the taking of testimony, to produce and cross-examine witnesses and to be heard in person or by counsel, and do whatever may be required by the Commission in the premises.

(b) That upon a final hearing the said Railway Company be denied the relief requested by it, and that the said Company be required to resume and reestablish adequate service on its entire South Park line from Denver west to Gunnison and Baldwin, via Garo, Buena Vista and Romley.

(c) For such other relief, in the premises, as will protect the interests of the public and require the said Company to perform its duty as a common carrier.

The Town of Buena Vista, by Philip Schall, Mayer." G. K. Hartenstein, Counsel.

13. Copy of the Return to Questionnaire as filed with the Commission by The Colorado and Southern Railway Company, which is as follows:

[fol. 107] Before the Interstate Commerce Commission

Finance Docket No. 1572

In the Matter of the Application of The Colorado and Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing the Abondenment of its Buena Vista-Romley line of Railroad.

Return to Questionnaire

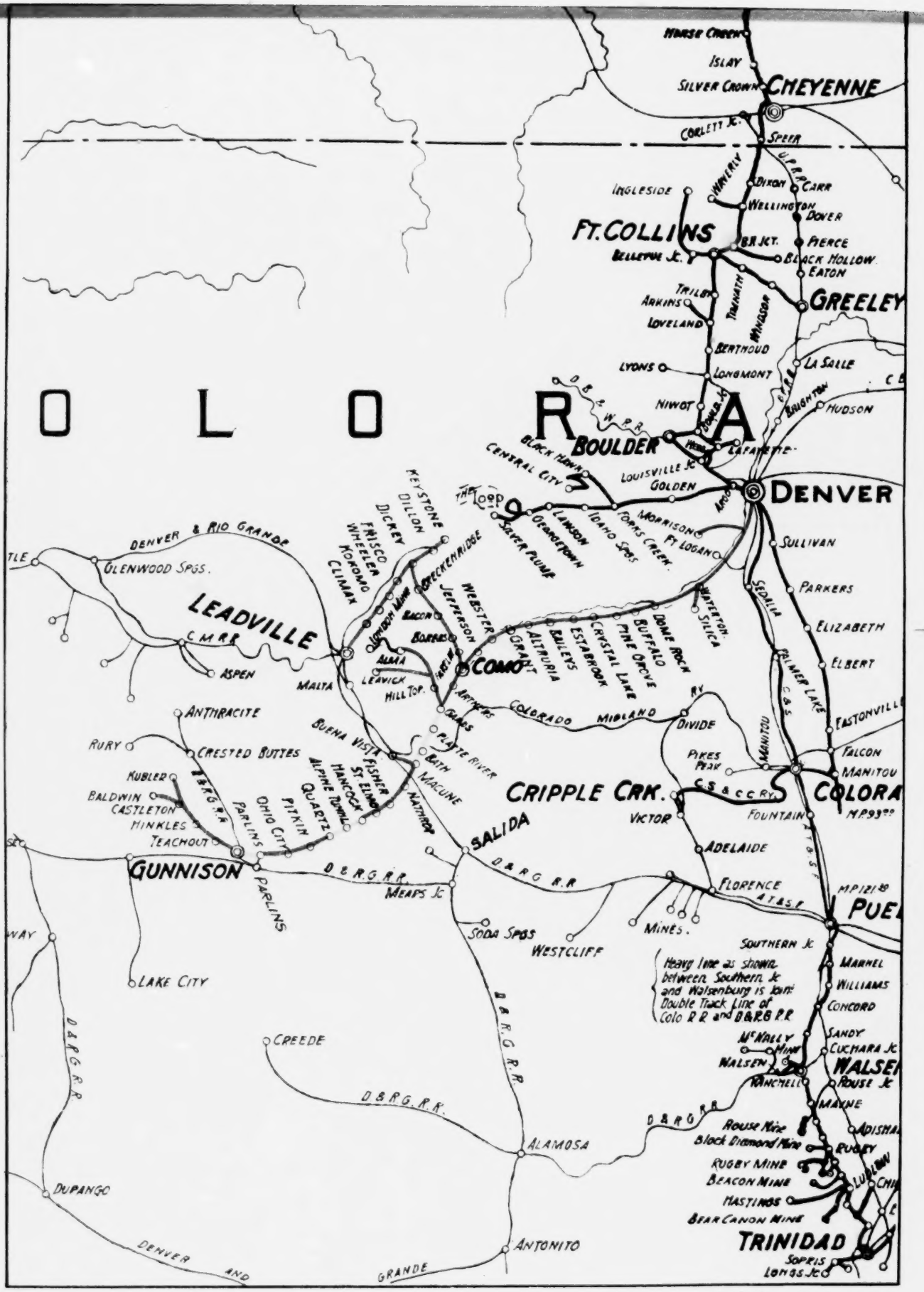
The Colorado and Southern Railway Company, having made application to the Interstate Commerce Commission, under para-

graph (18) of Section 1 of the interstate commerce act, as amended, for the issuance of a certificate of public convenience and necessity authorizing the abandonment by it of that certain narrow gauge line of railroad commonly known and designated as its Buena Vista-Romley Branch, located wholly within Chaffee County, Colorado, including the removal of the tracks, and extending for a distance of approximately 29.42 miles from the town of Buena Vista to the station of Romley, including trackage extending westerly from Romley to the Flora Belle mine and Hancock, which application is filed in the office of the Commission in Finance Docket No. 1572, hereby affirms that the notice of the application has been published in the form prescribed by the Commission, at least once during each of three consecutive weeks, in the following newspaper: Chaffee County, [fol. 108] Colorado, Republican, beginning September 17, and ending October 8, 1921; and that said newspaper is of general circulation in Chaffee County, Colorado, which is the only County in the State of Colorado in which the line of railroad proposed to be abandoned is situated; and the identified newspaper clipping hereto attached contains a true copy of the notice as published in said newspaper. The applicant also submits the following information required by the Commission:

Question 1. When the line in question was constructed, for what purpose or purposes, and its history as an operating unit from the time of construction up to the date of this return.

Answer 1. The present so-called Buena Vista-Romley branch is an isolated section of a narrow gauge line of railroad which was constructed during the years 1874 to 1882, by The Denver, South Park and Pacific Railroad Company, a Colorado corporation organized June 16, 1873, extending from Denver, across the Continental Divide by means of the Alpine Tunnel, to Gunnison and the Gunnison County, Colorado, coal fields; the railroad was completed into Buena Vista on February 9th, 1880; the portion thereof which is the subject of this application, i. e. from Buena Vista to Romley and Hancock, was constructed during the year 1880. In addition to the Gunnison County coal fields, this line of railroad served an adjacent metalliferous mining territory, particularly in the Alpine Tunnel territory, and also a number of mining camps and towns, of which the largest and most prominent were Gunnison and Buena Vista.

This line of railroad was continuously operated until 1910, during which year various portions thereof were washed out and destroyed [fol. 109] by floods, particularly for a distance of approximately 28.84 miles, between Garos, in Park County, and Macune, a point near Buena Vista, and for a distance of approximately 13.57 miles between Hancock, a point located easterly of the Continental Divide, and Quartz, a point located westerly of the Continental Divide, including the Alpine Tunnel and thereupon such washed-out and destroyed portions of said line of railroad were abandoned and operation thereover never resumed. Thereafter, The Colorado and South-


COLORADO
CHEYENNE
Horse Creek
Islay
Silver Crown
Corlett Jct.
Speer
U.P.R.R.
Hanley
Dixon
Carr
Ingleside
Wellington
Dover
FT. COLLINS
Bellevue Jct.
B.R. Jct.
Pierce
Black Hollow
Eaton
GREELEY
Trilby
Arkins
Loveland
Berthoud
Lyons
Longmont
La Salle
Brighton
Hudson
Niwot
Boulder Jct.
D.R.&W.P.R.
BOULDER
Black Hawk
Central City
Louisville Jct.
Golden
DENVER
The Loop
Georgetown
Silver Plume
Lawson
Idaho Springs
Forks Creek
Morrison
Ft. Logan
Sullivan
Keystone
Dillon
Dickey
Frisco
Wheeler
Kokomo
Climax
Denver & Rio Grande
Glenwood Spgs.
LEADVILLE
C.M.R.R.
Aspen
Malta
Leavick
Hill Top
Alaia
Robert
Uncle Sam Mine
Webster
Jefferson
Breckenridge
Bacon
Grant
Alma
Buckeye
Altruria
Bailey's
Estabrook
Crystal Lake
Buffalo
Pine Grove
Done Rock
Waterton
Silica
Sedalia
Parkers
Elizabeth
Elbert
Palmer Lake
Eastonville
Falcon
Manitou
Colora
M.P. 93
Anthracite
Rury
Crested Buttes
Kubler
Baldwin
Castleton
Hinkles
Teachout
R.G.R.R.
Parlins
Ohio City
Pitkin
Quartz
Alpine Tunnel
Hancock
St. Elmo
Fisher
Buena Vista
Bath
Macune
Nathrop
Antero
Johns
Platte River
Colorado Midland Ry.
Divide
Pikes Peak
Manitou
C.S. & C.C. Ry.
CRIPPLE CRK.
Victor
Fountain
Adelaide
SALIDA
GUNNISON
D.&R.G.R.R.
Meaps Jct.
Florence
A.T.&S.F.
M.P. 121.8
PUE
Soda Spgs
Westcliff
Mines
Southern Jct.
Heavy line as shown between Southern Jct. and Walsenburg is joint Double Track Line of Colo R.R. and D.&R.G.R.R.
Marnel
Williams
Concord
Sandy
McNally Mine
Cuchara Jct.
Walsen
WALSE
Ranchell
Rouse Jct.
Mayne
Rouse Mine
Block Diamond Mine
Rugby Mine
Beacon Mine
Hastings
Bear Canon Mine
TRINIDAD
Sopris
Longs Jct.
Lake City
Creede
Alamosa
Dupango
Antonito
Denver and Grande

ern Railway Company, which had succeeded to the ownership of said line of railroad in 1898, continued to operate that portion of said line of railroad extending from Buena Vista to Romley, for the purpose of affording transportation facilities to and from certain communities, mining camps and metalliferous mines located in the mountains westerly of Buena Vista and easterly of the Continental Divide; while the operation of that portion thereof between Quartz and the westerly terminus thereof, was taken over by The Denver and Rio Grande Railroad Company and has since been and is now being operated as a part of the Denver and Rio Grande Railroad System, with the exception of that portion thereof which parallels the Rio Grande Railroad between Parlins and Gunnison, a distance of approximately 11.64 miles, which portion has also been abandoned and is more or less washed out and destroyed. On the blue print map next attached said line of railroad as constructed and as operated until 1910 is shown by the red, yellow and green lines; the portions thereof now being operated and maintained by The Colorado and Southern Rialway Company being shown by the red lines; the portions thereof now being operated and maintained by the Denver and Rio Grande Western Railroad Company being shown by the green lines; and the portions thereof which have been abandoned being shown by yellow lines.

(Here follows map marked side folio page 110)

[fol. 111] Question 2. The general history of any past or existing receivership covering the line.

Answer 2. The Denver, South Park and Pacific Railroad Company was incorporated under the General Corporation Laws of the Territory of Colorado on June 16, 1873, for the purpose of building a narrow gauge line of railroad from the City of Denver to central, western and southwestern Colorado and beyond; its lines of railroad were constructed at various times between June, 1873 and January 1, 1889. On November 12, 1888, the Central Trust Company of New York, Trustee of the Consolidated First Mortgage of The Denver, South Park and Pacific Railroad Company, dated October 15, 1880 and of a Supplemental Mortgage dated March 15, 1884, filed its Bill of Complaint in the United States Circuit Court for the District of Colorado against The Denver, South Park and Pacific Railroad Company and The Union Pacific Railway Company, which suit was docketed as No. 2352, and subsequently the Farmer's Loan and Trust Company, Trustee of the First Mortgage of The Denver, South Park and Pacific Railroad Company dated August 1, 1876 and of a Supplement Mortgage thereto dated September 15, 1880, filed its Bill of Complaint in the same Court against the same defendants and this suit was docketed as No. 2385. Afterwards the two cases were consolidated under No. 2352.

The appointment of a Receiver was not prayed in either case nor was a Receiver appointed, but foreclosure and sale were prayed for. On May 21, 1889 a decree of foreclosure was entered in the Consolidated Mortgage and the Supplemental Mortgage in which of which the Farmer's Loan and Trust Company was trustee was adjudged to be $1,928,310.00 and the amount due under the First Consolidated Mortgage and the Supplemental Mortgage in which the Central Trust Company of New York was the trustee was adjudged to be $4,776,169.00. Upon default in the payment of said [fol. 112] amounts and after due advertisement, the Special Master appointed in said decree on July 17th, 1889 sold all the property of The Denver, South Park and Pacific Railroad Company to a purchasing committee selected by the bondholders for the sum of $3,000,000.00, and later, on August 28, 1889, executed a deed for such property, in which deed The Denver, South Park and Pacific Railroad Company joined.

On August 29, 1889 the purchasing committee conveyed all of such property to The Denver, Leadville and Gunnison Railway Company, which had been incorporated under the General Laws of Colorado on July 17th, 1889, for the purpose of acquiring, holding and operating the lines of railroad formerly owned by The Denver, South Park and Pacific Railroad Company. From the time of the organization of The Denver, Leadville and Gunnison Railway Company until 1894, said lines of railroad were operated as a part of the Union Pacific Railway System.

On October 13, 1893, in a case brought in the United States Circuit Court for the District of Nebraska, Receivers were appointed for the entire Union Pacific Railway System, who thereupon took charge of the properties of all of the companies comprising that System. Afterwards these Receivers reported to the Nebraska Court that the lines of Railway of the Denver, Leadville and Gunnison Railway Company were being operated at a loss and asked permission of that Court for The American Loan and Trust Company as trustee under the First Mortgage of The Denver, Leadville and Gunnison Railway Company filing a bill of complaint in the United States Circuit Court for the District of Colorado. On August 3, 1894, The American Loan and Trust Company filed its Bill of Complaint in the United States Circuit Court for the District of Colorado, said [fol. 113] case being docketed as No. 3131, against The Denver, Leadville and Gunnison Railway Company and others, and prayed for the appointment of a separate Receiver and the foreclosure of said mortgage.

On August 4, 1894 Mr. Frank Trumbull was appointed Receiver of the Denver, Leadville and Gunnison Railway Company and the Receivers of The Union Pacific Railway Company were ordered to turn over all of the property of The Denver, Leadville and Gunnison Railway Company to Mr. Trumbull as such Receiver. On August 6, 1898, the foreclosure decree was entered, adjudging the mortgage indebtedness to be $2,886,110.55 and that in default of payment thereof the Special Master therein appointed should advertise and

sell the mortgaged property. Accordingly, on November 18, 1898 the property was sold for the sum of $1,500,000.00 to a Purchasing Committee, the deed being dated December 9, 1898. On December 28, 1898, this Purchasing Committee deeded the property to The Colorado and Southern Railway Company, which had been incorporated December 19, 1898 for the purpose of acquiring from the purchasing committees at two different foreclosure sales the properties formerly owned by The Union Pacific, Denver and Gulf Railway Company and the Denver, Leadville and Gunnison Railway Company.

Question 3. The investment cost of the lines as shown by the applicant's books, stated as nearly as possible according to the primary accounts prescribed in the Interstate Commerce Commission classification of investment in road and equipment.

Answer 3. It is not possible to furnish the figures requested, for the reason that the line in question and its equipment were acquired by the Colorado and Southern Railway Company, applicant [fol. 114] herein, together with other lines, terminals, equipment, etc., for a certain amount of securities, and the investment cost of the line in question cannot therefore be stated. In addition, The Colorado and Southern Railway Company does not have any accounts from which such cost of the line in question may be determined.

Question 4. Whether any aid, gift, grant or donation of anything of value was contributed in consideration of its construction.

Answer 4. The only item coming under the above is that of right-of-way granted to the Denver, South Park and Pacific Railroad Company by the United States Government under the Act of Congress of March 3rd, 1875, and amounting to 333 acres, valued at $1.25 per acre, or $416.25 at the time of acquisition.

[fol. 115] Question No. 5. The amount and description of any bonds, notes or other evidence of indebtedness resting in whole or in part upon the line in question, or upon the earnings thereof, or upon the earnings of any other line or lines of the applicant not covered by the application, and of any evidence of indebtedness not resting specifically upon the line in question, but which may be affected by the proposed abandonment.

Paragraph No. 5

First Mortgage:

Date	December 31, 1898.
Maturity	February 1, 1929.
Amount Outstanding	$19,400,000.00
Rate of Interest	4%.
Interest Payable	Semi-annually, February 1st and August 1st.

Refunding & Extension Mortgage:

Date	May 1, 1905.
Maturity	May 1, 1935.
Amount Outstanding	$28,978,900.00.
Rate of Interest	4½%.
Interest Payable	Semi-annually, May 1st and November 1st.

Office of General Auditor, Denver, Colorado, October 7, 1921.

[fol. 116] Question No. 6. A copy of the applicant's general balance sheet as of the latest date for which such statement is available.

The Colorado and Southern Railway Company

Month of June, 1921

Assets

Investments:	
Investment in Road	$68,327,870.93
" " Equipment	10,965,819.32
Deposits in lieu of Mortgaged Property sold	35,284.10
Miscellaneous Physical Property	194,177.90
Investments in Affiliated Companies:	
(a) Stocks	5,962,151.10
(b) Bonds	11,332,327.12
(c) Notes	1,323,001.55
(d) Advances	419,297.92
Other Investments:	
(a) Stocks	53.00
(b) Bonds	1,127,560.76
(c) Notes	95,000.00
(d) Advances	13,746.55
(e) Miscellaneous	5,085,830.00
Total	$104,882,120.25
Current Assets:	
Cash	$1,910,624.28
Special Deposits	235,688.06
Loans and Bills Receivable	200.00
Traffic & Car Service Balance Receivable	99,102.77
Net Balance Receivable from Agents & Conductors	204,829.18
Miscellaneous Accounts Receivable	656,685.64
Material & Supplies	2,454,327.41
Other Current Assets	7,966.02
Total	5,569,423.36

Deferred Assets:		
Working Fund Advances		1,730.84
Other Deferred Assets		6,895,463.07
Total		$6,897,193.91
Unadjusted Debits:		
Discount on Funded Debt		187,829.98
Other Unadjusted Debits		637,415.78
Securities Issued or Assumed: Unpledged	$2,443,370.55	
Securities Issued or Assumed: Pledged	4,190,000.00	
Total		825,245.76
Grand Total		$118,173,983.28

[fol. 117] The Colorado and Southern Railway Company

Month of June, 1921

Liabilities

Stock:		
Common		$31,000,000.00
Preferred		17,000,000.00
Total		48,000,000.00
Governmental Grants:		
Grants in aid of Construction		20,048.00
Total		$20,048.00
Long Term Debt:		
Funded Debt Unmatured:		
Book Liability	$55,992,270.55	
Held by Carrier	6,633,370.55	
Actually Outstanding		49,358,900.00
Total		49,358,900.00

Current Liabilities:	
Traffic and Car Service Balances Payable	124,590.37
Audited Accounts & Wages Payable	1,262,327.13
Miscellaneous Accounts Payable	58,606.43
Interest Matured Unpaid	44,197.75
Dividends Matured Unpaid	174,272.00
Unmatured Interest Accrued	567,625.04
Unmatured Rents Accrued	25,764.87
Other Current Liabilities	35,761.90
Total	$2,293,145.49
Deferred Liabilities:	
Other Deferred Liabilities	6,933,410.51
Total	$6,933,410.51
Unadjusted Credits:	
Tax Liability	842,661.20
Revenue for Maintenance & Operation Guaranty Period	235,494.37
Accrued Depreciation—Equipment	4,212,289.79
Other Unadjusted Credits	45,234.48
Total	5,335,679.84
Corporate Surplus:	
Additions to Property through Income & Surplus	204,643.49
Appropriates surplus not specifically invested	500,000.00
Income Balance January 1 to date	113,038.80
Profit & Loss Balance since January 1, 1921	* 2,550.58
Profit & Loss Balance December 31, 1920	5,417,667.73
Total	6,232,799.44
Grand Total	$118,173,983.28

(Here follows table marked side folio page 118)

[*Red in copy.]

[fol. 118] Question No. 7. A copy of the applicant's income account for each of the five years next preceding the current year, and of such income account for that portion of the current year for which figures are available.

	1916	1917	1918	1919	1920	6 mos., 1921
Operating Income:						
Railway Operating Revenues	9,188,164.07	10,966,664.42	.....	.....	13,816,740.87	6,196,754.63
Railway Operating Expenses	5,752,629.59	6,797,304.14	16,000.61	50,251.79	11,342,898.95	5,089,094.40
Net Revenue from Railway Operations	3,435,534.48	4,169,360.28	16,000.61*	50,251.79*	2,473,841.92	1,107,660.23
Railway Tax Accruals	487,558.56	574,237.42	44,000.00	.....	784,224.09	454,775.14
Uncollectible Railway Revenues	610.92	1,267.88	.....	.....	3,159.60	7.88
Railway Operating Income	2,947,365.00	3,593,854.98	60,000.61*	50,251.79	1,686,457.43	652,877.21
Nonoperating Income:						
Hire of Freight Cars—Credit Balance	.....	.....	.....	.....	108,006.19	53,796.36
Rent from Locomotives	126,932.44	23,958.15	.....	.....	146,107.90	137,669.35
Rent from Passenger Train Cars	43,357.42	45,103.46	.....	.....	69,224.22	38,293.39
Rent from Work Equipment	830.26	1,157.26	.....	.....	9,163.20	2,307.90
Joint Facility Rent Income	21,166.10	21,434.46	.....	.....	44,376.82	15,039.19
Income from Lease of Road	33,961.13	34,280.44	2,515,492.40	2,516,031.89	448,408.61	17,436.72
Miscellaneous Rent Income	17,769.90	17,471.22	22,273.47	21,624.46	21,949.20	14,844.97
Miscellaneous Nonoperating Physical Property	.....	2,087.20	1,738.63	3,031.76	2,639.49	1,194.29
Separately Operated Properties—Profit	1,624.32	.....	.....	.....	.....	.....
Dividend Income	738,448.64	840,506.64	638,705.64	740,628.64	638,764.64	202,050.24
Income from Funded Securities	377,471.81	381,383.25	499,839.61	514,338.34	521,546.02	287,365.34
Income from Unfunded Securities & Accounts	35,607.73	69,636.27	18,730.51	175,854.01	192,219.49	180,042.96
Miscellaneous Income	.....	31.91	242,112.25	285,429.38	1,468,849.74	1,835.44*
Total Nonoperating Income	1,397,169.75	1,437,050.26	3,938,892.51	4,256,938.48	3,671,255.52	948,205.27
Gross Income	4,344,534.75	5,030,905.24	3,878,891.90	4,206,686.69	5,357,712.95	1,601,082.48
Deductions from Gross Income:						
Hire of Freight Cars—Debit Balance	11,902.43	59,752.83	.....	.....	.....	.....
Rent for Locomotives	125,494.19	16,771.34	.....	.....	136,966.93	63,364.13
Rent for Passenger Train Cars	36,476.06	39,742.89	.....	.....	43,173.12	30,654.69
Rent for Work Equipment	298.68	61.82	.....	.....	1,383.10	1,747.55
Joint Facility Rents	51,843.60	56,558.56	.....	.....	77,645.33	48,169.38
Rent for Leased Roads	111,650.00	111,650.00	111,650.00	111,650.00	111,830.38	56,321.00
Miscellaneous Rents	663.79	1,017.86	772.90	309.97	567.68	145.90
Miscellaneous Tax Accruals	.....	4,092.97	4,435.18	5,017.42	5,244.73	2,622.00
Separately Operated Properties—Loss	33,636.22	.....	.....	.....	.....	.....
Interest on Funded Debt	2,167,455.50	2,162,825.50	2,160,018.00	2,105,095.45	2,140,438.47	1,069,600.25
Interest on Unfunded Debt	5,019.02	131.39	90.33	1,750.24	1,988.88	4.46*
Amortization of Discount on Funded Debt	13,730.74	13,730.74	13,729.31	13,539.28	13,573.93	6,801.78
Maintenance of Investment Organization	.....	.....	171.92	51,987.53	4,000.00	.....
Miscellaneous Income Charges	89,179.38	71,113.13	211,653.19	133,390.43	214,834.10	38,621.46
Total Deductions from Gross Income	2,647,349.61	2,537,449.03	2,502,520.74	2,422,740.32	2,751,646.65	1,318,043.68
Net Income	1,697,185.14	2,493,456.21	1,376,371.16	1,783,946.37	2,606,066.30	283,038.80
Disposition of Net Income:						
Dividend Appropriations of Income	170,000.00	680,000.00	680,000.00	680,000.00	680,000.00	170,000.00
Income Appropriated for Investment in Physical Property	674,554.48	.....	.....	.....	.....	.....
Total Appropriations of Income	844,554.48	680,000.00	680,000.00	680,000.00	680,000.00	170,000.00
Income Balance	852,630.66	1,813,456.21	696,371.16	1,103,946.37	1,926,066.30	113,038.80

Office of Comptroller, Denver, Colorado, October 7, 1921.

[*Red in copy.]

[fol. 119] Question No. 8. If the application covers less less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis.

Colorado and Southern Railway Company

Comparative Statement of Operation, Line Buena Vista to Romley. Showing Gross and Net Operating Revenue Years 1916 to 1920, Inclusive

	1916	1917	1918	1919	1920	Jan. 1-21, to June 30	Total
Revenue ..	25,507.68	17,830.53	13,890.21	9,983.38	7,231.79	3,700.19	78,143.78
Expenses ...	25,520.55	25,185.04	33,602.75	33,846.32	36,227.35	16,487.03	170,869.04*
Net Opr. Revenue .	12.87*	7,354.51*	19,712.54*	23,862.94*	28,995.56*	12,786.84*	92,725.26*
Taxes	14,230.59	17,903.30	16,250.87	20,017.97	22,730.41	11,365.20	102,498.34
Railway Opr. Inc.	14,243.46*	25,257.81*	35,963.41*	43,880.91*	51,725.97*	24,152.04*	195,223.60*
Interest	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	12,300.00	135,300.00
Deficit	38,843.46*	49,857.81*	60,563.41*	68,480.91*	76,325.97*	36,452.04*	330,523.60*

Office of General Auditor, Denver, Colorado, October 7, 1921.

[*Red in copy.]

[fol. 120] Question No. 8. If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis.

The Colorado and Southern Railway Company

Statement of Revenue on Line, Romley to Buena Vista, Years 1916 to 1920, Inclusive

Year	Freight	Passenger	Mail	Express	Other	Total
1916	$20,167.36	4,007.00	None.	339.99	993.33	$25,507.68
1917	14,098.52	2,795.37	None.	353.36	583.28	17,830.53
1918	11,437.47	1,808.62	None.	232.93	411.19	13,890.21
1919	7,172.96	1,852.96	562.32	138.89	256.25	9,983.38
1920	5,432.58	1,122.04	346.09	111.37	219.71	7,231.79
Total	$58,308.89	$11,585.99	$908.41	$1,176.54	$2,463.76	$74,443.59

NOTE.—No mail carried by The Colorado and Southern Railway Company over line between Romley to Buena Vista for Years 1916-1917 and 1918.

Office of General Auditor, Denver, Colorado, October 7, 1921.

[fol. 121] Question 8. If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis.

The Colorado & Southern Railway Company

	1916	1917	1918	1919	1920
Maintenance of Way & Structures	12,010.05	10,413.93	13,443.76	11,992.38	11,338.45
Transportation:					
Station Service	1,231.00	1,424.75	1,967.43	1,537.59	1,627.93
Train Service:					
Enginemen Wages	2,519.33	3,438.40	3,774.02	4,601.10	5,139.32
Fuel for Locos	1,773.13	2,300.43	2,910.67	2,875.41	3,131.34
Trainmens' wages	2,820.60	2,820.60	3,940.60	4,018.82	4,449.47
Other Train Expenses	587.72	768.37	1,193.77	1,797.52	2,124.77
Total Train Service	7,700.78	9,327.80	11,819.06	13,292.85	14,844.90
Other Transp. Expenses	724.83	532.37	644.45	894.82	1,349.72
Total Transp. Expenses	9,656.61	11,284.92	14,430.94	15,725.26	17,822.55

Question 8. If the application covers less, etc.—Continued

	1916	1917	1918	1919	1920
Maintenance of Equipment:					
Locomotive Repairs	1,151.16	1,089.34	2,853.77	2,746.17	3,014.85
Freight Car Repairs	431.95	218.50	351.04	594.59	510.50
Passenger Car Repairs	84.35	92.68	177.20	104.72	250.52
Other M. of E. Expenses	1,102.35	969.28	1,122.41	1,297.42	1,388.62
Total M. of E. Expenses	2,769.81	2,369.80	4,504.42	4,742.90	5,164.49
Traffic	341.86	321.12	233.70	298.13	404.68
General	742.22	795.27	989.93	1,087.65	1,497.18
Total Operating Expenses	25,520.55	25,185.04	33,602.75	33,846.32	36,227.35
Taxes	14,230.59	17,903.30	16,250.87	20,017.97	22,730.41
Grand total	$39,751.14	43,088.34	49,853.62	53,864.29	58,957.76

Office of General Auditor, Denver, Colorado, October 7th, 1921.

[fol. 122] Question No. 9. A full explanation of the statements filed in response to the last preceding question, showing the method used, and the probable effect of continued operation upon the applicant's system earnings as a whole, with reasons for the conclusion.

The Colorado and Southern Railway Company

Memorandum

Explanation of Method Used in Allocating Operating Revenues to Line Between Romley, Colorado, and Buena Vista, Colorado

Freight Revenues

Freight revenue includes the folloving items:

Revenue from all shipments local to line between Romley, Colorado, and Buena Vista, Colorado.

Revenue from all shipments moving over line Romley, Colorado to Buena Vista, Colorado and, also moving over some other portion of the Colorado & Southern Railway, revenue is divided on a straight mileage prorate.

Revenue from all shipments received from or delivered to some other carrier, the total revenue accruing to the Colorado and Southern Railway Company is included, if movement over the Colorado and Southern Railway is confined to line between Romley and Buena Vista; if shipment moves over some other portion of the Colorado and Southern Railway, in addition to moving over line Romley, Colorado to Buena Vista, Colorado, he proportion accruing to the Colorado and Southern Railway Company is divided on basis of a straight mileage prorate.

(Approximately ninety five percent of freight revenue is derived from shipments which move over the Colorado and Southern Railway only between Romley, Colorado and Buena Vista, Colorado.)

Passenger Revenue

Passenger revenue includes the folbwing items:

Revenue from all passengers local toline between Romley, Colorado and Buena Vista, Colorado.

Revenue from passengers received from or delivered to some other carrier, the movement over the Colorado and Southern Railway being confined to the line Romley, Colorado to Buena Vista, Colorado.

(No tickets were sold for passengers moving over the line Romley, Colorado to Buena Vista, Colorado and also over some other portion of the Colorado and Southern Railway Company.)

Mail Reveiue

Mail revenue is directly allocated tothat line on basis of authorization from the Post-Office Department.

(It is understood that United States Mail was handled by automobile during the years 1916, 1917 and 1918.)

[fol. 123] Express Revenue

Express revenue is allocated on percentage basis, the percents being determined by using, as factors, total freight and passenger revenue on line between Romley, Colorado and Buena Vista, Colorado, as compared with total freight and passenger revenue of The Colorado and Southern Railway Company for each year, separately.

Other Revenue

Other revenue includes all other revenue except "Dining and Buffet Revenues," (no dining cars being operated between Romley, Colorado and Buena Vista, Colorado) being allocated on a percentage basis, the percents being determined by using, as factors, total freight and passenger revenue on line between Romley, Colorado, and Buena Vista, Colorado, as compared with total freight and passenger revenue of The Colorado and Southern Railway Company for each year, separately.

Office of General Auditor, Denver, Colorado, October 7, 1921.

[fol. 124] Question No. 9. A full explanation of the statements filed in response to the last preceding question, showing the method used, and the probable effect of continued operation upon the applicant's system earnings as a whole, with reasons for the conclusion.

The Colorado and Southern Railway Company

Method Used in Compiling Yearly Statements of Expenses of the Buena Vista-Romley Branch, Being a Part of the Gunnison District (South Park Division)

Maintenance of Way and Structures

Roadway and Bridge and Building labor and material—actual figures were used.

Other expenses, common to entire district, are divided on a track mileage basis; includes Superintendence, expense of store department handling material, insurance, small tools and supplies and stationery, approximating 16% of this expense.

Transportation

Wages of station employees, enginemen and trainmen—actual figures were used.

Other expenses, common to entire district, are divided on a train and locomotive mileage basis; includes superintendence, dispatching, station supplies and expenses, fuel for locomotives, water, engine-house expenses, train supplies, stationery and insurance, approximating 32% of the total,—fuel approximating 20% of the total.

[fol. 127] Question No. 14. The tonnage handled by the line in question, classified by principal commodities, for each of the five years next preceding the current year, stating separately the tonnage (a) originating and destined to points on the line and (b) interchanged with connecting carriers and moving over other lines.

A. Local Shipments Originating and Destined to Points on the Colorado & Southern Railway Company

Commodities:	1916		1917		1918		1919		1920		Total	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
Castings	.....	.....	.....	.....	.....	.....	20	98.00	.....	.....	20	98.00
Cement	11	23.17	10	12.10	12	14.48	.....	.....	.....	.....	33	49.75
Coal	.....	.....	50	15.00	.....	.....	18	53.48	.....	.....	68	68.48
Cordwood	.....	.....	.....	.....	30	45.00	.....	.....	.....	.....	30	45.00
Grain	20	66.03	28	92.10	.....	.....	.....	.....	.....	.....	48	158.13
Hay	100	97.09	136	219.11	36	65.65	26	57.63	.....	.....	298	439.48
Household Goods	.....	.....	6	10.89	.....	.....	.....	.....	.....	.....	6	10.89
Lumber	638	739.20	271	494.77	75	129.88	20	35.00	.....	.....	1,004	1,398.85
Oil	16	39.43	11	35.95	.....	.....	.....	.....	.....	.....	27	75.38
Other Products of Forest	.....	.....	.....	.....	40	60.00	.....	.....	.....	.....	40	60.00
Other Products of Manufacture	.....	.....	10	18.00	.....	.....	.....	.....	.....	.....	10	18.00
Ore	50	25.00	175	81.80	170	86.00	125	67.50	.....	.....	520	260.30
Potatoes	.....	.....	.....	.....	.....	.....	10	16.50	.....	.....	10	16.50
Sand	40	32.20	25	17.50	.....	.....	.....	.....	.....	.....	65	49.70
Merchandise L. C. L.	210	2,582.83	426	2,130.30	238	1,418.01	155	958.99	110	877.15	1,139	7,967.28
Totals	1,085	3,604.95	1,148	3,127.52	601	1,819.02	374	1,287.10	110	877.15	3,318	10,715.74

B. Foreign Interchanged With Connecting Carriers and Moving Over Other Lines

Commodities:	1916		1917		1918		1919		1920		Total	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
Bar and Sheet Steel	.....	.....	.....	.....	53	109.46	.....	.....	.....	.....	53	109.46
Castings and Machinery	11	28.73	61	149.12	30	201.79	.....	.....	.....	.....	102	379.64
Coal	6,680	5,175.33	6,762	4,116.55	3,818	3,140.56	2,550	2,368.46	951	1,108.84	20,761	15,909.74
Explosives	.....	.....	.....	.....	.....	.....	.....	.....	12	89.44	12	89.44
Hay	.....	.....	.....	.....	.....	.....	7	42.33	.....	.....	7	42.33
Lumber	.....	.....	.....	.....	121	170.82	.....	.....	29	165.99	150	336.81
Other Products of Manufacture	54	379.84	40	116.83	.....	.....	15	172.00	.....	.....	109	668.67
Oil	30	72.07	10	25.12	.....	.....	.....	.....	.....	.....	40	97.19
Ore	7,914	9,409.98	4,912	5,478.32	4,516	5,108.14	2,822	2,754.17	2,077	2,918.72	22,241	25,669.33
Potatoes	.....	.....	.....	.....	13	23.45	.....	.....	.....	.....	13	23.45
Miscellaneous	.....	.....	20	18.50	15	49.32	.....	.....	.....	.....	35	67.82
Merchandise L. C. L.	646	1,496.46	297	1,066.58	173	814.91	87	548.90	50	272.44	1,253	4,199.37
Totals	15,335	16,562.41	12,102	10,971.00	8,739	9,618.45	5,481	5,885.86	3,119	4,555.43	44,776	47,593.15

Recapitulation

	1916		1917		1918		1919		1920		Total	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
Local	1,085	3,604.95	1,148	3,127.52	601	1,819.02	374	1,287.10	110	877.15	3,318	10,715.74
Foreign	15,335	16,562.41	12,102	10,971.00	8,739	9,618.45	5,481	5,885.86	3,119	4,555.43	44,776	47,593.15
Totals	16,420	20,167.36	13,250	14,098.52	9,340	11,437.47	5,855	7,172.96	3,229	5,432.58	48,094	58,308.89

Office of General Auditor, Denver, Colorado, October 7, 1921.

Maintenance of Equipment

All expenses, common to entire district, are divided on a locomotive, freight and passenger car mileage basis.

Traffic

All expenses, common to entire district, are divided on a train mileage basis.

General

All expenses, common to entire district, are divided on a train mileage basis.

Office of General Auditor, Denver, Colorado, October 7, 1921.

[fol. 125] Question 10. The names of all cities and incorporated villages located upon the line in question, by counties, with the approximate population of each, and the source of the information as to such population, and the names of all other railroads serving them.

Answer 10.—

	Population	Source of information
Buena Vista, Chaffee County.....	903	U. S. Census, 1920.
Mt. Princeton, " "	12	" " "
Fisher, " "	6	" " "
St. Elmo, " "	37	" " "
Romley, " "	25	" " "
Hancock, " "	10	" " "

There is no other railroad serving the above towns with the exception that the Denver and Rio Grande serves the town of Buena Vista.

Question 11. The approximate population of the whole territory tributary to the line in question, with explanation of the method by which the limits of such territory were defined.

Answer 11. The approximate population is 993 people, figures being taken from United States Census for 1920, limits defined by the Census.

Question 12. The distance in miles from another line of railroad of each city or village named in question 10.

Answer 12.—

Mt. Princeton	to	Buena	Vista,	8.8	miles	to	Denver	&	Rio Grande	R. R.
Fisher	"	"	"	15.5	"	"	"	"	"	"
St. Elmo	"	"	"	20.	"	"	"	"	"	"
Romley	"	"	"	22.3	"	"	"	"	"	"
Hancock	"	"	"	24.8	"	"	"	"	"	"

[fol. 126] Question 13. The names of all railroads with which the line in question connects for interchange of traffic and the points of such connection and interchange.

Answer 13. Denver and Rio Grande Railroad connects with Colorado and Southern Railway at Buena Vista, Colorado, for interchange of traffic.

(Here follows table marked side folio page 127.)

[fol. 128] Question 15. The nature of industries located in the territory tributary to the line, such as farming, mining, lumbering, manufacturing, etc., how long established and the extent to which each such industry is dependent upon the line in question for transportation.

Answer 15. Mining, Farming and Lumbering are the principal industries located in the territory tributary to the line, and have been established between forty and fifty years. These industries are only in part dependent on the line in question for transportation, since the railroad is paralleled with an automobile road over which auto lines for both freight and passenger traffic operate whenever the traffic has been sufficient to create a demand therefor.

[fol. 129] Question No. 16. The passenger traffic handled on the line in question for each of the five years next preceding the current year, giving separately the number of local and connecting line passengers (if the latter designation is applicable) and the revenue derived from each class.

The Colorado and Southern Railway Company

Statement of Passengers and Revenue Accruing to the Romley-Buena Vista Line for the Calendar Years 1916, 1917, 1918, 1919, and 1920. Local Business and Business in Connection with Foreign Lines Shown Separately.

	Local		Connecting lines	
	Passengers	Revenue	Passengers	Revenue
1916	3,711	$4,009.18	1*	2.18*
1917	2,569	2,748.02	35	47.35
1918	1,589	1,799.57	9	9.05
1919	1,819	1,852.70	1	.26
1920	1,126	1,113.94	5	8.10
	10,814	11,523.41	49	62.58

Office of the General Auditor, Denver, Colorado, October 7, 1921.

[fol. 130] Question 17. If the volume of traffic, freight or passenger, or both, has diminished during recent years, any reasons which may be assigned for such decrease.

Answer 17. The volume of both freight and passenger traffic has diminished during the recent years on account of the practically complete suspension of all mining activities. The working force in the entire district at the present time probably does not exceed 18 or 20 men, whereas formerly the working force averaged 200 men.

Question 18. What effort, if any, has been made to dispose of the line in question so as to insure continued operation.

Answer 18. No effort has been made to dispose of the line in question, there being no available purchaser.

[*Red in copy.]

Question 19. Opinion of counsel that the proposed abandonment is within the charter powers of the applicant:

Answer 19. Attached hereto marked Exhibit "A" is the opinion of the General Solicitor of The Colorado and Southern Railway Company that the proposed abandonment is within the charter powers of the applicant.

Question 20. All reasons relied upon in support of the application.

Answer 20. Under Section 15A of the Interstate Commerce Act, the duty of "honest, efficient and economical management" is expressly imposed upon carriers by railroad subject to the act; the preceding responses to the interrogatories clearly indicate the reasons [fol. 131] for the filing of this application; there has been a practically complete suspension of all mining activity in the territory served by this line of railroad and diligent inquiry discloses no tangible prospect of a revival of mining in this district; The Mary Murphy Mine, located at Romley, is the principal mine in this territory, and at the present time it is practically closed, only a few leasers being at work. The increasing deficit year by year clearly demonstrates the growing lack of justification for continuing the operation of this line of railroad. Mining is practically the only source of traffic and with the mines closed, people have left the various communities; the agricultural or farming population is very scattered and small and the traffic developed thereby is very slight, owing to the rugged mountainous character of the territory, with its high altitude, short growing season and severe winters. Consequently there is no opportunity for making a sale of this line. The Colorado Midland Railroad which was recently abandoned and junked, ran westerly of Buena Vista through a very similar territory and the reasons justifying its abandonment and also the abandonment of the other portions of this line of railroad between Caros and Gunnison, Colo., as hereinabove set forth, now justify and demand from the standpoint of honest, efficient and economical management of the transportation facilities of The Colorado and Southern Railway Company, the abandonment of this isolated piece of track; nor is there any public interest involved outweighing the economic situation.

Question 21. A complete set of maps as called for by Question 21 accompany this Questionnaire.

[fol. 132] STATE OF COLORADO,
City and County of Denver, ss:

Robert Rice makes oath and says that he is the Vice President and General Manager of The Colorado and Southern Railway Company, applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing return to questionnaire of said Commission in respect of the application in Finance Docket No. 1572; that he has carefully examined all of the statements referred to in said return and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth in such return and that all such statements made and matters set forth therein

are true and correct to the best of his knowledge, information and belief.

(Signed) Robt. Rice.

Subscribed and sworn to before me, John F. Brent, a notary public in and for the State and County above named, this 13th day of October, 1921. (Signed) Jno. F. Brent. My commission expires October 18, 1922. (Seal.)

[fol. 133] Exhibit "A"

Denver, Colorado, Oct. 10, 1921.

Mr Robert Rice, Vice-President and General Manager of the Colorado and Southern Railway Company, Denver, Colo.

DEAR SIR: Pursuant to your request that I advise you in writing my opinion as to whether the proposed abandonment of the Buena-Vista-Romley Branch of The Colorado and Southern Railway Company is within its charter powers, such opinion to be attached as an exhibit to the questionnaire to be filed with the Interstate Commerce Commission in its Finance Docket No. 1572, I beg to advise that, after careful investigation and study of the question submitted, I am of the following opinion:

The Colorado and Southern Railway Company was organized in 1898 under the general corporation laws of Colorado. It has no special charter. The constitution and laws in effect at the time the Company was organized and such amendments thereto as have been lawfully enacted since, constitute its charter. These laws at that time provided, and now provide, among other things, as follows:

"The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the state, in such manner, however, that no injustice shall be done to the incorporators."

Art. XV, Sec. 3, Const. of Colorado.

[fol. 134] "Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any designated points within this state, and to connect at the state line with railroads of other states and territories."

Art. XV, Sec. 4, Const. of Colorado.

"All individuals, associations and corporations shall have equal rights to have persons and property transported over any railroad in this state, and no undue or unreasonable discrimination shall be made in charges or in facilities for transportation of freight or passengers within the state, and no railroad company nor any lessee, manager or employee thereof, shall give any preference to individuals, associations or corporations in furnishing cars or motive power."

Art. XV, Sec. 6, Const. of Colorado.

"Any number of persons, not less than five, may associate under the provisions of this act, to form a company for the purpose of constructing and operating a railroad. Their certificate of incorporation shall, in addition to the matter required in the second section of this act, specify as follows:

"First. The places from and to which it is intended to construct the proposed railway.

"Second. The time of the commencement and the period of the continuance of such proposed corporation.

"Third. The names and places of residence of the several persons forming the association for incorporation.

"Fourth. In what officers or persons the government of the proposed corporation and the management of its affairs shall be vested."

1908 R. S., sec. 5410.

"Every such corporation, formed under this act, shall, in addition to the powers hereinbefore conferred, have power:

"First. To lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of the railway; and to cut down any standing trees that may be in danger of falling or obstructing the railway, making proper compensations therefor.

* * * * * * *

"Fourth. To receive and convey persons and property on its railway.

"Fifth. To erect and maintain all necessary and convenient buildings, and stations, fixtures and machinery for the convenience, accom-odation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of said railway.

"Sixth. To regulate the time and manner in which passengers and [fol. 135] property shall be transported, and the compensation to be paid therefor."

* * * * * * *

1908 R. S., 5411.

"If any railway corporation organized under this act shall not, within two years after its articles of association shall be filed and recorded, as provided in the second section of this act, begin the construction of its road, and expend thereon twenty per cent. of the amount of its capital within five years after the date of its organization, its corporate existence and power shall cease: Provided, That any such railway corporation may at any time reduce its capital stock in manner and form as provided by the laws of this State, and if twenty per cent. of the amount of its capital, as so reduced, shall have at any time been expended in good faith in the construction of its road, then its corporate existence and power shall not cease or be deemed to have ceased."

1908 R. S., 5413.

"Whenever the railroads, telegraph lines, property and franchises of any railroad company, organized and existing under the laws of this State, shall be sold and conveyed under or by virtue of any power contained in any trust deed or mortgage, or pursuant to the judgment or degree of any court of competent jurisdiction, it shall be lawful to organize a railroad company under the laws of this State, for the purpose of purchasing, maintaining, operating, extending or completing the railroads and telegraph lines so sold and conveyed."

1908 R. S., 5428.

"The railroad company so organized shall have power and authority to acquire and purchase the property and franchises so sold and conveyed and to take, hold, exercise and enjoy all the estate, franchises, rights, powers and privileges, claim or demand in law or equity of the corporation whose property and franchises have been so sold and conveyed, and in payment of the price therefor, such railroad company may issue its capital stock and bonds, and may mortgage its property and franchises with such classification of capital stock and bonds as may be agreed upon by and between such railroad company and the parties beneficially interested, or who may have the ownership and control of such property and franchises."

1908 R. S., 5429.

"It shall be competent for any railroad or telegraph company, or corporation, upon a vote in person or by proxy of two-thirds in value of its stockholders, at any meeting thereof, to alter and amend its articles of association, so as to change its termini, or so as to extend the lenght of the line thereof from either of its termini to such further and other point as they may determine, or for the purpose of constructing branches from its main line, and upon such vote the said company may make articles amendatory of their original articles for the purpose of extending or changing the line of its road, [fol. 136] or for constructing branches from its main line as aforesaid; and whenever any such company or corporation shall, by a vote of two-thirds in value of its stockholders, so determine to amend or alter their articles of association, and shall certify to such amendments or alterations, made as aforesaid, under the corporate seal of such company or corporation, attested by its president and secretary, and shall file such certificate in the office of the secretary of state, and also in the office of the recorder of deeds in the county wherein the principal business of such company may be carried on, such amendment, amendments, or alterations shall have the same force and effect as though said amendment or alteration had been included in and made a part of and embraced in its original articles of association."

198 R. S., 886.

"That any railroad company having located its line of road, whether the same is completed or not, may make a new location of its line, and may acquire the right of way for such new line, in the

same manner as is now provided for acquiring the right of way by the statutes of Colorado. Provided that in acquiring said new right of way, the previous right of way shall revert to the owner or owners of the land through which said previous right of way was granted, on the payment or tendering payment to the railroad company the amount assessed by the board of appraisers and paid by said railroad company for said previous right of way."

1908 R. S., 5519.

It is important to note in connection with the above provisions of the Constitution and statutes—

First. That the right to alter any charter of incorporation is limited by the provision that such alteration shall work "no injustice to the incorporators." The right of alteration is therefore a limited one, and any injustice is forbidden.

Second. The Constitution confers on railroad corporations "the right to construct and operate" railroads, but imposes no liability or duty on railroads to construct any line, nor to continue for all time the operation of any line constructed or acquired. (Art. XV, Sec. 4, Constitution.)

Third. The statutes nowhere impose any duty or obligation on a railroad company to build its line, nor to continue the operation of a line when it is once located or acquired. They contain simply grants of power to build and operate lines. The words of the statutes in section 5411 are: "Every such corporation * * * shall * * * have power" to do the things enumerated. Among such grants of power is the right "to regulate the time and manner in which passengers and property shall be transported."

Fourth. In 1885 a special statute (1908 R. S. secs. 5428-9 supra) was passed providing for the organization of railroad companies for the purpose of purchasing railroad properties sold under foreclosure proceedings. The language of this act is that "it shall be lawful to organize a railroad company * * * for the purpose of purchasing, maintaining, operating, extending or completing the railroads so sold and conveyed." The language further is: "The railroad company so [fol. 137] organized shall have power and authority to acquire and purchase the property and franchises so sold and conveyed and to take, hold, exercise and enjoy" the property sold. There is nothing whatever in this statute, which is the one under which The Colorado and Southern Railway Company was organized, which requires lines once acquired to be forever operated, irrespective of the interest of the company owning them, or whether the demands for transportation will pay the operating expenses of the service.

Fifth. Section 886 expressly provides for the amendment of any railroad charter "so as to change its termini or so as to extend the length of the line thereof from either of its termini." This section covers two cases—one the absolute change of its termini, and the other an extension of its line beyond the termini named in its charter. The language is inconsistent with the theory that a line once built

must forever be operated between its termini, because it says the corporation may "change its termini." This section provides that the termini may be extended or reduced or changed by a vote of two-thirds of its stockholders. Such amendment of the charter is to have the same force and effect "as though said amendment or alteration had been included in * * * its original articles of association."

Sixth. Section 5519 provides that "any railroad company * * * may make a new location of its line," and provides for the abandonment of its old line and for the reversion of its old right of way.

These statutes indicate beyond the possibility of dispute, first, that the right to build and operate a line of railroad is now, and has been ever since Colorado was a state, a purely permissive grant on the part of the State, and carries with it no obligation whatever that the company shall build the line, or that a company once building a line, or once acquiring a line at foreclosure sale, shall forever operate such line in its entirety, irrespective of any conditions that may arise in the future. The lawmakers of this state left the continued operation of the line to the decision of the company itself, relying on the self-interest of the company to continue the operation of the property wherever there was any public demand for it, and recognizing that a railroad that could not earn its operating expenses was necessarily an economic loss, or a charge upon other lines—a condition in itself essentially unjust, and in the end obviously against the public interest.

We believe that the overwhelming weight of authority is that, under statutes similar to those of Colorado, no obligation is imposed on a railroad company to continue, with out limitation of time, the operating of a worthless line—one which does not pay, and cannot be made to pay, the expenses of operation."

Union Pacific R. Co. v. Hall, 91 U. S. 343.

Northern Pacific R. Co. v. Washington, 142 U. S. 492; 35 L. Ed. 1092, 1095, and cases cited.

Commonwealth v. R. R. Co., 12 Gray (Mass.) 180.

[fol. 138] State v. Southern Minnesota R. Co., 18 Minn. 40.

Sherwood v. R. R. Company, 94 Va. 291, 26 S. E. 943.

South Corolina v. Jack (C. C. A. 4th C.) 145 Fed. 281, 286.

Selectmen v. Citizens Electric Co., 199 Mass. 400, 85 N. E. 419, 422.

San Antonio Street Ry Co. v. Texas, 90 Texas, 520, 525, 39 S. W. 926, 928.

State v. Power Company, 56 Pac. 685, 686.

Union Trust Co. v. Curtis, 182 Ind. 73, 105 N. E. 562, 566.

Public Service Commission v. P. B. & W. R. Co., 122 Md. 444, 89 Atl. 726, 728,

Honolulu Transit Co. v. Hawaii, 211 U. S. 282, 289-290, 53 L. Ed. 186, 188.

Yours very truly, (Signed) E. E. Whitted, General Solicitor.

[fol. 139] Notice

The Colorado & Southern Railway Company hereby gives notice that on the first day of September, 1921, it filed with the Interstate

Commerce Commission at Washington, D. C., its application for a certificate that present and future public convenience and necessity permit the abandonment of its branch line of railroad extending from Buena Vista to Romley, Chaffee county, Colorado, a distance of 29.42 miles.

It is desired to abandon said branch line because of the fact that there is not sufficient traffic available thereon to justify continued operation.

The Colorado & Southern Railway Company.

First publication Sept. 17.
Last publication Oct. 8, 1921.

STATE OF COLORADO,
County of Chaffee:

I, Ed. S. Gregg do solemnly swear that I am Editor of The Chaffee County Republican, a weekly newspaper published and having a general circulation in Chaffee County, in the State of Colorado, that it has been established, printed and published continuously for more than twenty-six weeks prior to the first publication of the annexed notice, and is a newspaper within the meaning of an Act of the General Assembly of the State of Colorado, approved April 21st, 1897, and that the annexed notice was published in the regular and entire issue of every number of said weekly paper for 4 consecutive insertions; the first publication of said notice was in the issue dated Sept. 17, A. D. 1921, the last publication of said notice was in the issue dated Oct. 8, A. D. 1921.

In witness whereof, I have hereunto set my hand this 8th day of October A. D. 1921.

Ed. S. Gregg.

Subscribed and sworn to before me, a Notary Public, this 8th day of Oct. A. D. 1921.
Rice E. McDonald, Notary Public. My commission expires Feb. 28, 1922. (Seal.)

[fol. 140] Attached to said Return to Questionnaire are fifteen (15) large maps or blue prints, too large to be photographed or printed. The first of these is a route map of the line of railroad in question. The other fourteen (14) are track and right-of-way maps of the same line.

Appellant will petition the trial court to send these up as original Exhibits in accordance with paragraph 4, Rule 8, Supreme Court Rules.

[fol. 141] Transcript of Evidence Before the Commission

14. Copy of Transcript of Evidence and Exhibits taken at a hearing had before the Commission's Examiner at Denver, Colo-

rado, on February 3rd and 4th, 1922, at which time and place the said transcript discloses the following proceedings were had:

Examiner Gault announced that Finance Docket 1572 was set for hearing and took all appearances.

Thereupon, certain preliminary motions to dismiss, and certain objections to the taking of evidence were made.

E. I. GRENFELL, was thereupon called as a witness for the applicant and having been duly sworn, testified as follows:

Direct examination.

By Mr. Whitted:

"My name is E. I. Grenfell. I reside in Denver, Colorado. Have been a resident of the State of Colorado since 1868. My present occupation is General Auditor, Colorado & Southern Railway Company. I was General Auditor of the Company at the time the Answers to the Questionnaire of the Interstate Commerce Commission were made up. Generally speaking, the facts, figures and answers set forth in that Questionnaire are true and correct.

Applicant's Exhibit No. 1 is a correct copy of the balance sheet." (Exhibit 1 was thereupon offered in evidence.)

"Exhibit 2 is a supplement to the Answer in the Questionnaire, Question No. 7. It is a true and correct statement of the matters referred to on that Exhibit." (Exhibit 2 was thereupon offered in evidence.)

"Exhibit 3, which is a supplement to the Answer to Question No. 8 of the Questionnaire, is a true and correct statement of the matters referred to in it." (Exhibit 3 was thereupon offered in evidence.)

"Exhibit 4, which is a supplement to the Answer to Question No. 8, is a correct statement of the matters referred to in it." (Exhibit 4 was thereupon offered in evidence.)

"Exhibit 5, which is also a supplement to the Answer to Question 8, is a true and correct statement." (Exhibit 5 was thereupon offered in evidence.)

"Exhibit 6, which is a supplement to the answer to Question No. 14, is a true and correct statement." (Exhibit 6 was thereupon offered in evidence.)

"Exhibit 7, which is a supplement to the answer to Question [fol. 142] No. 16, is a true and correct statement." (Exhibit 7 was thereupon offered in evidence.)

"Exhibit 8, which is a statement showing the cars, tonnage and revenue by commodities on Buena Vista branch for the year 1921, is correct." (Exhibit 8 was thereupon offered in evidence.)

"Exhibit 9, which is a statement of net income for the period January 1, 1916, to November 30, 1921, of the Colorado & Southern Railway Company, compared with an investment of six per cent allowed under the Transportation Act of 1920, is a true and correct statement of the accounts of the Colorado & Southern Railway Company for that period." (Exhibit 9 was thereupon offered in evidence.)

"I desire to say that the information stated in Answer to Question No. 9 of the Questionnaire is general and applies to prorates made over the line where shipments move over different portions, that is, moving from different districts—more than one district. It happens in this case that we did not find that we have any such business—the business is local. There is no prorate to the Romley branch of business passing over any other portion of the Colorado and Southern. The earnings are the actual earnings, and are not distributed by any prorate method. The business there is local, it does not connect up. There is no express done at the present time over the Romley branch. The American Railway Express Company tell me that they have never done any business over the line, and I was unable to find out when the Wells-Fargo discontinued, so I don't know when the Express business was abandoned. In answer to Question No. 8 in the original return of the Questionnaire and in Exhibit 4 my statement shows under the heading 'Other Earnings,' for the year 1920, $219.71 and for 1921, $200.51. We arrive at that figure by taking the revenue prorate of the other earnings as shown by the classification. Other earnings referred to are earnings other than the passenger, freight, express and mail. That would be demurrage, excess baggage, storage, switching. I have prorated the earnings on things of that kind to this line on the basis of the freight, passenger, mail revenue. My impression is that that would be more favorable to this line than the actual figures would show. I haven't any means of knowing exactly.

In answer to Question No. 9 of the Questionnaire, I answer 'Other Expenses, common to entire district, are divided on a track mileage basis; includes superintendence, expense of store department, handling material, insurance, small tools and supplies, and stationery, approximately 16 per cent of this expense.' By 'this expense' I mean 16 per cent of the total expense of the Romley line. I have a statement of the wages paid the other men on the Romley line for the month of December, 1921. It is a correct statement of the wages paid trainmen on the line for that month. I haven't the pay of the conductor stated separately; I have the conductor and brakeman together, amounting to $363.19. The Engineer and Fireman $417.14. The conductor and brakeman and engineer and [fol. 143] fireman make three trips a week. They are paid for six trips; they are guaranteed six trips per week, in other words, they are paid for every day except Sunday, whether they work or not and the engineer and fireman are paid for Sunday also. In other words, under the Schedule we are compelled to pay the engineer and fireman for daily service—30 or 31 days in the month, as the case may be, although they only make three trips a week up and back over this line. As I understand it, they do a certain amount of repair work on their engines and cars at Buena Vista on the intervening days. At any rate, we pay the engineer and fireman on the theory that they are working all the time; whereas, as a matter of fact, they only make three trips a week. The conductor and brakeman make three trips per week; they are off duty on the other days, and render no service whatever to the railroad company at that time." (Exhibit 10 was thereupon offered in evidence.)

"Coal used on the Romley branch comes from the Royal Mine in the Trinidad district. That coal is hauled over the Colorado & Southern lines to Pueblo without charge against the Romley line. The only charges against that line are just the foreign line charges of the Denver and Rio Grande for hauling the coal from Pueblo to Buena Vista, and nothing is charged for the haul on other parts of the Colorado & Southern line."

(Thereupon the Questions and Answers in the Questionnaire and the Exhibits attached to the Questionnaire, and Exhibits 1 to 10, inclusive, supplementing the Answer to the Questionnaire, were received in evidence over the objection and exception of protestants.)

Cross-examination.

By Mr. Whatley:

"I am somewhat familiar with the line of railroad here involved. That is, the one extending from Buena Vista to Romley and Hancock. I have been over it. That line is a portion of the Gunnison District. The Gunnison District is a part of the South Park Division. All the South Park Division is a narrow-gauge line. I haven't the total mileage of the Gunnison District with me and am not prepared to testify as to the mileage. Not all of the Gunnison District is operated by the Colorado & Southern at the present time. Operations over the portion of line from Garos in Park County to McCune in Chaffee County, and from Hancock in Chaffee County over to Quartz and from Parlins to Gunnison were discontinued November 1, 1910. The D. & R. G. operates the portion from Quartz to Parlins I believe, and then over its own track into Gunnison. At about that time (November 1, 1910) the D. & R. G. ceased operation of its branch line from Leadville to Dillon in Lake and Summit Counties, and the Colorado & Southern ceased operating those portions of the Gunnison District which are now abandoned. I haven't the mileage of the line from Buena Vista to Romley and Hancock, but I think someone here could tell you it.

The items of investment in the road set forth in response to Question No. 6 of the Questionnaire, and also in Exhibit 1 which was received this morning, represent the cost of the road at the reorganization, plus the additions since that time. These items do not carry any depreciation of any kind and is simply the money as charged on our books and capital account. The road was purchased in the first [fol. 144] instance by a stock and bond issue. I don't know at what value those stocks and bonds were charged up in the capital account, whether at par or at the market. I am not familiar with that; that was prior to the time of my connection with the Company as Auditor, and I haven't looked it up. The equipment is the purchase price of the equipment. I think some of that was paid in stock and bonds. I do not know at what figure those stocks and bonds were included. The items of Exhibit 1 following those two are all cash transactions. Those items do not carry any depreciation of any kind; I think those are all at par. What Exhibit 1 sets forth is simply the book

value of the company's property as shown on that Exhibit. Exhibit 2 shows the operating income, the non-operating income, reduction from gross income, etc., for the years 1916 to 1920 inclusive, and for eleven months of 1921. The figures for December, 1921, were not compiled in time to be included in this statement. We have not yet prepared the Annual Report of the Company for the year 1921 showing the total figures.

Exhibit 3 carries certain allocations to the Buena Vista-Romley line, of revenues directly allocated to that line. We allocate to this branch line a portion of the general expenses of the Company. Those that are included under general classification. All expenses common to any other district are divided on train mileage basis. The taxes are worked up by the Tax Agent, and he took the actual taxes for the district as allocated to that district under the laws of the State of Colorado. I am not familiar with that method of allocation and I don't know how they made up their taxes. Those are the actual taxes paid allocated to that line. I understand that there is in Chaffee County considerable mileage belonging to the Company which is not operated at all. Taxes on the non-operated portions of the line are not included in this Exhibit, the Tax Agent was asked to furnish the figures for this operated line only, using that portion of it only. He divided the taxes as between the operated and non-operated portions of the line on a mileage basis. I understand he gave to the operated line as against the non-operated line the same freight mileage basis. I am not sure that this is absolutely true, but I think it is. In other words, I have the figures the Tax Agent gave me and any other information would be hearsay.

In Exhibit 4, the freight, passenger and mail business are the actuals. The express revenue shown there we are in doubt about so we prorated that on a revenue basis. We found after we had made the statement that in these last three items that we gave to the line there had been no express at all; that is, 1919, 1920 and 1921. The express shipments to Romley, St. Elmo and other points are shipped by the Railway Express Company and we receive them at Buena Vista and haul them to the destination, and to the express charged to Buena Vista we simply add the freight charge to the point of delivery, and that is the item which we list here as express. The item that we list here as express will represent our proportion of the express earnings if there were any for all of those years; but in the last three, I learned there was no express business at all, so we have given credit for express revenue that we never received. The item here is not freight. Freight is included under freight; the actual charges that we receive are under freight. These earnings we have shown for express we did not receive at all. It happened to be in our [fol. 145] statement because the express company doesn't report to us in detail; they gave us a certain amount of earnings for the line, and we have to prorate, and we prorate it on a revenue basis to the definite districts, so not knowing the express company had discontinued business up there, we prorated those items. I said I was sure that three years, 1919, 1920 and 1921, should be eliminated from Exhibit 4, but I could not determine either from the express com-

pany or from my own officials when that operation ceased, but I do know that the American Railway Express Company did not do any express business. We should at least eliminate the last three items—$138.89, $111.37 and $93.80 from the earnings on the statement, Exhibit 4. We did not actually receive that money from the express company for business on the Romley line. That is a portion of the earnings on other operations of the Colorado and Southern on other lines. We take the total earnings, credited to us by the express company, then we prorate it on the basis of freight, passenger and mail revenue, to each branch on the whole line. In that way we gave the Romley line some express earnings on that basis while they did no business. The revenue we received on that line shows in the freight figures. Shipments of express from Denver to St. Elmo would simply be the express rate from Denver to Buena Vista and the freight rate from Buena Vista to St. Elmo. The express from Denver to Buena Vista would be over the Rio Grande. We would not get any portion of that express revenue from the express company. That charge would simply carry the express to Buena Vista plus the freight rate on it wherever it is going. The consignee would pay the bill covering all the charges. Our proportion of it would be freight only. The express company would collect the express from us at Buena Vista.

Exhibit 5 is merely a separation of the operating expense figures appearing on exhibit 3. This is just a more detailed statement of these figures.

Referring to Exhibit 7, we simply run a combination freight and passenger train three days a week and make the round trip on each of those days. This Exhibit is all the passenger earnings on that line.

Exhibit 8 is the revenue for the year derived from the class of business as set forth on that Exhibit. This company did have a line extending from Denver to Gunnison. Under the present arrangement, a freight shipment originating at Trinidad and destined for Romley or St. Elmo would be handled by the Colorado and Southern to Pueblo and there turned over to the Rio Grande and by it hauled to Buena Vista and then turned over again to the Colorado & Southern. Whether, if our entire line line was operated we would bring that freight from Trinidad to Denver and haul it all the way over our own lines is a traffic matter. I don't know just what the traffic officials would do. We could do that. The line between Garos and McCune has been abandoned. That was a portion of the Gunnison District of the South Park Division. I have not been up there for a good many years and am not personally acquainted with it.

[fol. 146] Exhibit 9 is simply a statement of the operating income of the entire Colorado & Southern Railway system for the period therein designated made up on the basis of the standard return. That is operating income. It does not purport to include non-operating income. I believe that no one of these Exhibits which I have identified this morning except Exhibit 2, does contain the non-operating income for those periods. This statement included equipment rents and joint facility rents. This is made up on the basis of a standard return as it was used. The Colorado & Southern Railway Company

has paid or declared dividends in 1921. It declared 4% on the first and second preferred, and 3% on the common. That has been paid. As I testified to Exhibit No. 2, a portion of the dividends were shown on there. There is $170,000 that is shown on the statement of dividends. The balance of it is not shown. The $170,000 was paid in the early part of the year and the balance had not been paid out on the first of December. Protestant's Exhibit 11 is a copy of the Annual Report for the year 1920. We have not made the report for the year 1921 yet."

(Thereupon Protestant's Exhibit 11 was offered in evidence, objections duly made.)

"Applicant's Exhibit 10 shows the wages of employees on the operated portions of the line from Buena Vista to Romley and Hancock. I couldn't answer the question whether we could require them to work every day in train service if we desired. The records show that the line here in question was constructed in the year 1880. It has been operated by the Colorado & Southern since January, 1899. I am familiar with the character of business that is hauled over this line only in a general way; I have been over the line. I should say it was largely mining."

Redirect examination.

By Mr. Whitted:

"The only equipment that the Colorado and Southern purchased with bonds was the equipment acquired with the original purchase of the line. The line was purchased in 1899 and any equipment they purchased since that period has been paid in cash. When I refer to the purchase of equipment with bonds, I simply refer to what equipment was on the line at the time of the sale.

These accounts are all kept in accordance with the Rules of the Interstate Commerce Commission. Everything that is included in the Answer to the Questionnaire is reported to the Commission.

In allocating to this line the express earnings shown on Exhibit 4 as $339.39, $353.36, $232.93 covering the years 1916 to 1918, that is merely a distribution of the entire express earnings over the Colorado and Southern line on a revenue pro rate basis—on the basis of the gross freight, passenger and mail revenues. That would undoubtedly give to this line a good deal more than it is actually entitled to for the last three years, because it didn't do any express business. I don't know anything about the other three years. I don't think it is excessive if they were doing express business over there during those three years. The express business on the Romley [fol. 147] line would be below the average but the revenues are also below the average and we have only got a revenue pro rate. I think the pro rate is fair because we have taken the revenue pro rate to that line, and that being lower than the earnings on other portions of the line, it would be correspondingly low in the amount of express revenue.

In making up Exhibit 3, we asked the Tax Agent for the actual taxes paid on the line involved. It has nothing to do with any other part of the railroad. They were made from his receipts from the counties through which the line operated—from Buena Vista station to the Hancock station."

By Mr. Whatley:

"The fact is that considerable of the equipment which the company purchased when it took over this line is still in use. I couldn't say whether the equipment used on this particular branch of the line is equipment which was purchased at that time."

(Thereupon pages 1 to 44, inclusive of Protestant's Exhibit 11, being the 22nd Annual Report of the Board of Directors of the Colorado and Southern Railway Company for the year ended December 31, 1920, was received in evidence.)

R. C. Goudy was thereupon called as a witness, and having been duly sworn, testified as follows:

"My name is R. C. Goudy. I reside at Denver. My occupation is Chief Engineer of the Colorado & Southern lines. We have a regular office profile of the line from Buena Vista to Hancock. I haven't a blue print of that with me, but I have the profile on tracing cloth from which a blue print can be made. I will furnish the Examiner and the other side blue prints of that portile map. I have here a copy of the original profile map. I know that it is made from our records and is correct."

(Thereupon a copy of the map was marked Exhibit 12 and received in evidence.)

"The map shows 4 per cent. maximum grade. The distance from Buena Vista to Northrop is 7.4 miles. For that distance the line runs down the Arkansas Valley. It has been a number of years since I have been over this line."

Cross-examination.

By Mr. Whatley:

"The maximum grade is 4 per cent. That is the maximum grade between St. Elmo and Hancock. The maximum grade between St. Elmo and Buena Vista is four per cent. We have some four per cent. line East of St. Elmo at about Mile Post 24. That is the grade going from Buena Vista to St. Elmo. The maximum grade coming the other way is 1.7 per cent. The maximum grade between St. Elmo and Hancock is in going from St. Elmo to Hancock. There are grades at every point on the line. The grade from Mt. Prince-[fol. 148] ton up is continuously a very heavy grade. That will all be shown by the profile. The profile shows that Buena Vista has an elevation of 9,582 feet. This may have been carried over from some other data, and might have been an assumed elevation. About

7,950 is the correct elevation. I did not prepare this profile myself. It was prepared under my direction. I did not make the surveys. All I know about it is that it is a part of the official records of the office. Undoubtedly it is made from actual measurements—it could not be made in any other way. Men out of my office have made the actual figures and this map has been compiled by me from those figures. I was not Chief Engineer of the Company when this was made. This profile does not show the curves on the line, but when it is finished it will. I took this profile off the table to bring it over here. This profile, when finished, will show the approximate ground lines, the elevation or basic tie, the alignment, that is, the curves, the rates of grade and the elevations. It will show also the correct elevation at Buena Vista and at Romley, and Hancock and other stations. I will look up the actual elevations. The profile may have been made up from an assumed starting point. There might be that difference, but the relative elevations will be correct. The blue print which I am going to give will be a duplicate of this map with the addition of the curvatures which will be added.

This profile represents just the Romley branch of the Gunnison line. I am not able to give the distance from Garos to Buena Vista from this profile. This profile, Exhibit 12, represents the line from Buena Vista to Hancock. As a matter of fact it goes on past the tunnel up to about Mile Post 24. The distance between Garos and Buena Vista is 30.7 miles. The distance between Hancock and Baldwin, the Western terminus of this line, is 60.8 miles. No part of that distance is operated by the company. I cannot say what part of it is leased to the Denver and Rio Grande. The distance between Hancock and Parlins is 31.7 miles. None of the part from Parlins to Gunnison is operated by the Colorado & Southern. I am not familiar with the arrangement as to the lease on a part of it.

From Buena Vista to Schwanders, going down the river, the curvature is very slight. From St. Elmo to Hancock we have a maximum curvature of 20 degrees; from Fishers to St. Elmo we have a maximum curvature of 24 degrees; from Mt. Princeton to Fishers, we have a maximum curvature of 20 degrees; 29 between Buena Vista and Hancock. 37 per cent. of the line is curved; the balance, or 63 per cent. is not. Hancock is at the end of the operated line.

E. F. Lott, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Whitted:

"My name is E. F. Lott. I am Division Superintendent in charge of the line from Buena Vista to Hancock. Hancock is the end of [fol. 149] the line. The distance from Buena Vista to Hancock is 28.8 miles; from Buena Vista to Mt. Princeton is 12.8 miles. The line enters the Canon at Mt. Princeton. From Buena Vista the line runs down the Arkansas Valley to Nathrop, and there turns West and runs to Mt. Princeton. It is about 12 miles from Buena Vista

to Mt. Princeton, and from Mt. Princeton to the end of the line at Hancock it is practically 16 miles. That is a narrow gauge track. From Buena Vista to Mt. Princeton the weight of the rail is 40 pounds; Mt. Princeton to Mile Post 150.16—a distance of about five miles—it is 50 pound rail; Mile Post 150.16 to 151.98, 56 pound; Mile Post 151.98 to St. Elmo—about 3½ miles—50 pound; St. Elmo to Romley, about 2 miles, 40 pound rails; from Romley to Hancock, about 2½ miles, 56 pound rail. One engine is over there on the line. The total weight of the engine is 76,000 pounds; total on drivers, 66,000; tender, loaded, 47,033 pounds; engine ready for service, 123,033 pounds.

The first stop that the train makes out of Buena Vista is at the D. & R. G. Crossing. There is no town there. The next stop is generally at Mt. Princeton; there is no town there to speak of. There is a siding, section house and a hotel which operates in the summer time. The next place they stop would depend on the business which the train had—the freight. Sometimes they stop at Fisher. There are a few houses there I believe, around in that vicinity. We have a siding there, but no agent. There is no agent at Mt. Princeton. The next place is St. Elmo. There is no agent there, and no station. Just a side-track. People live in St. Elmo. After you leave St. Elmo the next station is Romley. We do not maintain an agent there. There is a station there and a siding. There are no agents along that line from Buena Vista to Hancock and none at Hancock. The only agent we have is at Buena Vista. The work commonly done by an agent on a line is performed by the conductor insofar as handling way-bills and freight, and so on, is concerned. From Romley to Hancock it is 2.5 miles. The trains do not all run up to Hancock; we only go up there occasionally. As to how frequently in a month they run up to Hancock from Romley is something that we haven't got an accurate record of. I get my information from the train crew about once a week.

This road from Mt. Princeton runs along what is known as Chalk Creek practically all the way up to Romley. I believe there are some mines located on this line. I know the names of some of them. The Flora Bell Mining Company is located above Romley between Romley and Hancock; the Alla Bell is located above Romley; the Mary Murphy is located at Romley; the Rarus-Warrior is located above Romley. These are not all; I have one or two other names. The Stanley Mine, the Wildes Mine. I believe the Mary Murphy is being worked at the present time; the Flora Bell is not being operated that I know of. None of the others are being operated that I know of, except I believe some development work or main working at the Rarus Warrior. I understand that the ore which is shipped out of these mines goes to the smelter at Leadville for treatment. The ore is hauled down over this line from Romley to Buena Vista, and then transferred to the Denver and Rio Grande Road. They have a three-rail line between Buena Vista and Leadville. Whatever ore is shipped out of this country goes up to Leadville [fol. 150] for treatment. There is a mill at the Mary Murphy Mine. It is closed down at the present time. There is one other mill up

there at the present time. It is between St. Elmo and Romley, and it is closed down.

We strike the heavy grades on this line at Mt. Princeton. We have trouble with the line. It is subject to floods, more of what we term a wash-in nature. We have experienced some trouble by wash-outs and slides. I know of no other mines from Mt. Princeton up to Romley than the ones I have mentioned. I believe there is a little farming. I would say they were ranches.

There is a wagon road parallel with the railroad. It practically parallels the line from Romley to Mt. Princeton and than cuts off across the country. I would say that it is a few miles shorter between Mt. Princeton and Buena Vista by the wagon road than by railroad. I believe there is an auto line between Mt. Princeton and Buena Vista. I wouldn't say all the passengers that go to the hotel travel by the auto line, but I believe the major portion of them do; that being a shorter line and better accom-odations than the railroad can furnish.

This railroad runs right around Mt. Princeton. The Canon the railroad follows from Mt. Princeton to Hancock is rather narrow. It is of a mountainous character—high mountains on each side of the track. I would say that they are rather steep.

We pay the conductor and brakeman on this line for six day service each week, and we pay the engineer and fireman for seven days service each week. Their working time is only such time as it takes them to go up and back over this line three days a week. It takes about 8 hours each day to go up and back. The actual service of the conductor and brakeman is about 24 hours a week. The engineer and fireman the same amount of time except that they work Sundays also, looking after their engine. We are compelled to pay these wages in order to get men to operate the trains. I am not familiar with the schedules of wages paid conductor and brakeman, engineer and fireman on the plains east of Denver, but I have the rates of pay for the crew on the Buena Vista branch, which is rather high. The wages paid on the Buena Vista branch at the present time are: conductor $7.04 a day, overtime $1.32 per hour; brakeman $5.04 a day, overtime $1.11 per hour; Engineer $7.28 a day, $1.36½ an hour overtime; Fireman $5.72 per day, $1.07 overtime per hour.

In 1920 we put 1127 ties in on that line; in 1921, 1057; and in 1922, I estimate that it will take 1560 ties. It has been the object of the company to keep that line safe for the amount of business that is done over it, putting in just as few ties, of course, as we can and still operate with safety. It will vary from year to year, and our ties for renewal for this year (1922) are heavier than they were in 1920 and 1921. Furthermore, this is an etsimate for 1922, which we expect and would like to put in. At the end of the year we may find that it does not go quite to that amount, or it may go over it. In my opinion it will require substantially that number of ties to be put in during the coming year in order to take care of the property; [fol. 151] with the present business we should put in that number of ties. Those ties in the track will cost about $1.04, so that the tie

expense for the coming year would be substantially somewhere between $4,500 and $5,000.

We have one or two rather high bridges on this line. We have a total of twenty bridges, crossing from one side of the canon to the other, and one or two of them over the Arkansas. The highest bridge is forty-six feet high, 292 feet long. We have another about 46 feet high, 304 feet long. Then there are two other bridges, one 128 feet long, and one 114 feet, and the balance of them run from 15 feet to 90 feet. The number of bridges on the entire line from Buena Vista to Romley is twenty.

We have some box cars and a few coal cars, and some flat cars on this line. We have two or three flat cars we keep for work-train purposes over there.

Some of the mines located on this line consume coal. I don't know what mines they get their coal from. We receive the coal at Buena Vista from the Denver and Rio Grande. It is inter-changed there. It comes in narrow gauge cars to Buena Vista and does not have to be transferred from broad gauge to narrow gauge equipment. We haul the cars from Buena Vista up to Romley and back again. I believe the Rarus-Warrior is the only mine I know of that gets coal. I haven't that information other than the Rarus-Warrior. We have a combination baggage and coach car which is the only passenger equipment on the line. We run a mixed train which goes out three times a week, leaving Buena Vista about 8:00 A. M. and getting back about 4:00 P. M., on Monday, Wednesday and Saturday.

I made up a statement showing the station expense, Buena Vista to Romley, the section gang expense, the trainmen's expense and the enginemen's expense for the months of 1921. The paper which I hold in my hand is a copy of that statement. (Thereupon Applicant's Exhibit No. 13 was offered in evidence, and was received in evidence over the objection of protestants.)

Thereupon Mr. Whitted, counsel for applicant, asked and was granted leave to read into the record certain extracts from the Thirteenth Census of the United States taken in 1910, Supplement for Colorado, as follows:

"Area, 103,658 square miles. Population in 1910, 799,024; population in 1900, 539,700; population in 1890, 413,249. Percent of increase, 1900 over 1890, 30.6%. Percent. of increase, 1910 over 1900, 48%. On the same page, the area of Chaffee County, Colorado, is given as 1083 square miles. Population in 1890, 6612; 1900, 7,085; 1910, 7,622. An increase between 1890 and 1900 of 7.2%. Between 1900 and 1910, 7.6%.

In the same volume at page 572, it is shown that between 1900 and 1910 the rural population in Chaffee County, Colorado, decreased 4.9%. Rural population is defined as that part of the population residing outside of the incorporated places having 2,500 inhabitants or more.

On page 573 of the same volume, it is shown that Chaffee County was in that class of counties in Colorado in 1910 at the time of taking of the census in which the population is stated as being from six to

eight persons per square mile. The rural population is stated, on the same page, in 1910, as being in that class where the population [fol. 152] was from two to six persons per square mile.

On page 575 in the same Volume, total population of Buena Vista in 1910 is given as 1,041, and in 1900 as 1,006.

Population of St. Elmo Town is given as 46 in 1910, and in 1900 as 64.

Population of the City of Salida is given in 1910 as 4,425 and in 1900 as 3,722, and in 1890 as 2,586.

The same figures with reference to the population of Buena Vista, Salida and St. Elmo are given on pages 585 and 586 in said Volume.

On page 631 of the same Volume, the approximate land area of Chaffee County is given as 693,120 acres; land in farms, 37,286 acres; land in farms in 1900, 47,065; improved land in farms in 1910, 16,733 acres; improved lands in farms in 1900, 14,726 acres. The per cent of land area in farms is 5.4%.

I have the figures for the 1920 census. The following information is taken from Volume 1 of Reports of the Fourteenth Decennial Census of the Department of the Interior: Page 96, Chaffee County, Colorado. Area, 1,083 square miles. 1920 population, 7,753, or in other words, 7.2 persons per square mile; in 1910, population 7,622. That is an increase of 1910 to 1920 of about 130 people in the county. 1900 population, 7,085; 1890, 6,612, 1880, 6,512. Pages 186 and 187: Population of St. Elmo, 1920, 37; 1910 population, 46; 1900 population, 64. It appears that there are half as many people there now as there were twenty years ago. The population of the Town of Buena Vista, 1920, 903, 1910, 1,041, 1900, 1,006. It appears that the population of Buena Vista is less in 1920 than it was twenty years ago.

Page 359, the population of St. Elmo Precinct, which includes, as I understand it, St. Elmo and some additional territory, is given as 44 in 1920, 85 in 1910 and 145 in 1900. These are the Election Precincts. Precinct 8, Nathrop, is given in 1920 as 196; 1910 as 149, 1900 as 224. According to the statement of this Census, the population of Precinct 2, Romley, 1920, was three persons. The population of 25 shown on the Questionnaire may be an Election Precinct or something like that."

(Thereupon Applicant's Exhibits numbers 14 and 15, being two maps, were offered and received in evidence.)

Mr. Whitted made the following explanation of Exhibit number 15:

"The lines in yellow there have been abandoned something like twelve years, and are a large part of the way taken up and removed and have been for years. That line between the two yellow lines there in the center of the page is this line in controversy."

Thereupon, Mr. B. F. Lott resumed the stand for further direct [fol. 153] examination.

(It was thereupon stipulated that the Colorado Midland Road, as shown on the Exhibits just offered in evidence, had been abandoned, the tracks taken up and was no longer in existence.)

By Mr. Whitted:

"We handle, with one engine and crew, 15 loads down the Canon from Romley. Going up the hill, we handle 110 tons. That is the maximum up, and is the safety limit we put on coming down. The ranches to which I referred, are along the line between Mt. Princeton and up as far as St. Elmo, Colorado. I should judge there are possibly two or three of them. They are small tracts of land that appeared to me as if somebody had possibly attempted farming, such small places as you find in a mountainous country. There is no shipment of live-stock over there by our line. We have never hauled any that I remember of. We do not ship any hay out over that line. In September there was no farm product shipped out; in October we forwarded one car of hay from Buena Vista out toward Romley. I don't know the destination. There was no out bound business from the Romley end of the line to Buena Vista in September. There was one car of hay in October, but the statement which I have doesn't show whether that car was moving towards Buena Vista or from it; it just shows the commodity handled and the number of cars. In November there was one car of hay, but it doesn't show where it moved from. It shows in cars forwarded from Buena Vista. The October and November report would indicate that it was moved from Buena Vista towards Romley, not from Romley towards Buena Vista. December also shows one car moving in the same direction—that would be Buena Vista towards Romley, and not from Romley towards Buena Vista. So far as this record shows in the four months there was only a possibility of one car of agricultural produce moving from the direction of Romley towards Buena Vista, and that particular car, the movement of which is uncertain, may have been going the other way.

The altitude of Buena Vista is 7,955 feet. The station at Mt. Princeton is 8,181 feet. The altitude at Fishers is 9,259, and of St. Elmo, 10,053, and of Romley, 10,535 and the altitude of Hancock is 11,017. We have only a siding at Glen Cliff. Nobody lives there that I know of. I don't know of anybody living at Fishers. The height of Mt. Princeton Mountain is 14,196 feet."

Cross-examination.

By Mr. Whatley:

"I am the Superintendent of the South Park Division of the Colorado and Southern Railway Company. The South Park Division is all narrow gauge track except that in the Clear Creek District which extends from Denver to Silver Plume we have a standard gauge railroad from Denver to Golden. Outside of that, it is all narrow gauge line except the Leadville Mineral Belt at Leadville, which is three rail. I don't know that the Rio Grande uses any

of the Colorado and Southern rails up there. Broad gauge equipment of the Colorado and Southern would come into Leadville loaded with coal but over the Denver and Rio Grande tracks; it could not enter Leadville on our own tracks. In the South Park Division we [fol. 154] have the Leadville District, so-called, which extends from Como to Leadville, and the Platte Canon District, which extends from Denver to Como. At Como the line branches off into the Leadville District which goes on to Leadville and what we call the Gunnison District which runs in the other direction through Park County. Of the Gunnison District, we operate from Como to Garos, including Alma and Fairplay. From Como to Garos is 15.98 miles. The line from Garos to McCune, 30.7 miles, is not operated. I don't know how much of the track remains on the road bed at this time. Possibly some of it has been washed out, and, there may have been some taken up. None has been taken up by the company since I became Superintendent—since April. The line from Buena Vista to Hancock is operated, and from Hancock to Gunnison and Baldwin it is not operated by the Colorado and Southern Railway Company. I am not familiar with the lease of a portion of the line over near Gunnison to the Denver and Rio Grande Railroad. The operated stretch of road which is involved in this proceeding, viz, the line from Buena Vista up to Hancock, is about 28 miles of what is known as the Gunnison District. A part of each end of the line has been abandoned so far as operations by our company are concerned, leaving just the little stretch in the middle.

The South Park Division generally, is engaged in serving the mining communities of Clear Creek County and Summit, Park and Lake Counties and Chaffee County. I believe that in all of those counties we have had considerable falling off of business in the last two years. There are parts of the line just mentioned that we are receiving some ore from. The amount we receive from this (Romley) line is a very small amount. I don't know about the silver ore or the content of the ore.

The hotel over at Princeton Station is a summer resort and I believe is engaged in business only in the summer months. Since I have been Superintendent the only train service that we have had which served that hotel has been the combination service running three times a week. I understand there is an automobile operated during the time the hotel is open between the hotel and Buena Vista. That is information that I received in Buena Vista. I was also advised that the party that runs the hotel also operates the automobile, and also I find that while there was (not) any regular service performed between Buena Vista and the hotel by some parties in Buena Vista, that you could always rent or hire an automobile at Buena Vista to take you over there. My information is this line is operated during the time the hotel is open. I don't know that this automobile line was discontinued only when the hotel is closed. We operate the train from Romley to Hancock when there is freight to go. We don't run to Hancock. We go to Romley. Most of the mines along this line are not shipping at the present time. I do not know to what extent they are working or carrying on their development work. We

get our information from the shipments that are made. Aside from that, I have no personal knowledge as to what they are doing. I have only information that I have received up in that territory. The principal industry in that section is mining, and when the mines are not operating and shipping there is no employment for people in there and no business for the company. My information is that the mines have not worked actively since about the lat-er part of 1918 or the first of 1919.

[fol. 155] I became Superintendent of this line in April, 1921. I was with the company twelve days in July and August in 1919. Prior to April, 1921, I had no personal, individual knowledge concerning conditions over this particular line. The line from Buena Vista to Romley is subject to both wash-ins and wash-outs in the summer months. I think possibly we would find that in some other sections of the State we have the same conditions. In the Platte Canon District and the Clear Creek District at times. That is due to cloud bursts that we have in the mountains and the heavy rains that wash this gravel down over the tracks. This line from Buena Vista to Romley is peculiar in one way, and that is where we have our wash-ins, just about Mt. Princeton, it seems to come down off Chalk Mountain—slides off the Mountain—and the big, heavy rains take it down to the track and sometimes take the track out, and other times fills it up on top anywhere from thirty to fifty feet in length, and five to six feet in height and that is extraordinarily hard stuff to handle either when it is wet or after it dries. When it is wet, it seems to stick to a shovel and it is hard to remove, and when it gets dry, it becomes hard and solid like cement. We are troubled with that every year, possibly three or four times in the summer would be all. I am basing my answer simply on my experiences since coming to the line in April, 1921. Prior to that time all I know is what others have told me. At one time during this past season, I believe there were five places including this place I have just described, where we had wash-ins, and at another time I believe about two or three places that were washed in. We experienced considerable trouble on the Platte Canon District in the year 1921. I wouldn't say that that was an unusually heavy rainy season practically all over the State, but I believe it was unusual in places.

I believe that a road parallels the railroad from Mt. Princeton to Romley, that is from the station which we call Mt. Princeton. It runs along beside the railroad. In the winter months we have had considerable bother with snow in operating the railroad—we run into heavy snow at times there and that snow naturally is on the wagon road.

The compensation which we pay our train crew is a matter of contract between the company and its employees, and I think adjustments are made by the United States Railway Labor Board. In order to keep men over there, we have to give them certain work under the contract and guarantee them certain amounts. We have some overtime on this line.

We generally get ties for this line from the Leadville District and some from the Gunnison District. When I say Gunnison District,

I mean between Como and Garos. We haul those to Leadville and send them out over the Rio Grande. In the cost which I have given, I include the freight we have to pay the Rio Grande for handling that business. I don't believe there are any ties cut along this line between Buena Vista and Romley. It may be that in the years gone by there was quite a business of that kind on this line, I don't know.

The bridges on this line are safe for the traffic over there at this time. We can haul fifteen loaded cars down from Romley to Buena Vista and we can haul 110 gross tons ups. That would mean about two cars of coal, the combination car, which is used also as a caboose and possibly one empty, weighing about nine or ten tons.

[fol. 156] In addition to the out bound farm products, we have had some ore shipments out of this territory. Some of the properties are operating on a very small scale now. I will read you the report from our agent at Buena Vista for the four months, September, October, November and December, 1921, as to cars of ore shipped out: 'September, 7; October, 6; November, 9; December, 3.'

The South Park Division on this line from Buena Vista to Romley is in no way separate or distinct from the Colorado and Southern Railway System in this State so far as I know.

By Mr. Hartenstein:

I have been with the Colorado & Southern Railway Company, as Superintendent and Assistant Superintendent since 1907. I was not on the South Park Division during that period—Not connected with it at all. I haven't the data with me as to where the ending of this South Park Division is in Gunnison County. I can give you where the road runs from the city of Gunnison from data. I was not with the road when the line West of Gunnison was in operation. I don't know how far West it runs.

We have a siding called Nathrop. I was not with the Division when the road was operated through (from Denver) to Nathrop and I do not know whether the Nathrop section furnished any traffic in the shape of cattle, stock, hay or grain from the farming section at that point. Buena Vista is — far as we run at the present time; we could not haul beyond there, but we are not refusing any traffic. I am aware of the surroundings of the town of Nathrop with reference to agricultural products only in a general way. I believe our siding at Nathrop is about three quarters of a mile to a mile from the Rio Grande Station at Nathrop. Our rails do not go down to the town at the present time. They may have at one time, but not to my knowledge. I would say that around Nathrop on the Denver and Rio Grande that there is some stock grazing, hay raising, and grain. This land lays in the vicinity of Nathrop. The agricultural land is all west of the river and the Rio Grande follows the river. I have not been over our line from Garos to McCune and am not familiar with it or its present condition.

It took us 8 or 9 days to clear the track in 1921 when we had the wash-out on Chalk Creek; our traffic was suspended about that length

of time. I haven't the records with me. While we kept a record of that, I haven't it with me at this time.

By Mr. Whatley:

The distance over our line from Buena Vista to Denver if it were in operation straight through, is 135.3 miles. I cannot give the distance by the Rio Grande.

[fol. 157] By Mr. Whitted:

This town of Nathrop, which counsel has spoken about, is on the main, through route of the Rio Grande, a broad gauge railroad. I believe that any business, in or out, in that section goes to that Company. I would say that this little narrow gauge road cannot compete with that broad gauge line. I think people shipping stock would prefer the broad gauge car. Both the Midland and the C. & S. are partly out of operation.

By Examiner Gault:

These rails are steel. From McCune to Nathrop they were laid in 1884; Nathrop to Romley in 1880. That is when the road was built, and if there has been any change in the rails from that time to the present, I haven't that information with me. I don't know for sure whether there has been any change in the rails or not. From my observation I would say that the 40 pound rail is old rail—been there for a long time. The fifty and fifty-six, I think, is newer rail. I think there would be need of replacing the 40 pound rail within a short time. The fifty and fifty-six, especially the fifty-six, would possibly last for sometime. The 40 pound would possibly last for a year or two yet, maybe more. It would depend considerably on the traffic. But that is a pretty light rail, and old.

The locomotive was built in 1890.

I believe, generally speaking, that the highway paralleling the railroad is in fair condition for a mountain road. I don't think it is a State Highway. I believe automobiles can go over it to Romley. I think they could carry traffic over it. Trucks could carry freight, I believe.

The railroad is carrying mail now. We are meeting very little competition with trucks in the territory at the present time. I cannot say as to the prospect of competition along that line but I believe it would be possible to operate a truck line from Romley down. The highway practically parallels the railroad to Mt. Princeton then goes off. It is shorter from Mt. Princeton into Buena Vista than it is by railroad. It is a good road from Buena Vista to Mt. Princeton. I can't say whether it is straight. All other stations and towns between Mt. Princeton and Buena Vista are served by the Denver and Rio Grande. It is 6.4 miles from Mt. Princeton to the D. & R. G. crossing. By wagon road I would say it is about 9 miles from Mt. Princeton to Buena Vista.

The ties on this line are native pine. These bridges are mostly trestles, some steel. They are in fairly good shape—that is they

are safe for the traffic at the present time. We have an estimate here on the repairs on the bridges for 1922. The labor to make those bridges, or, rather to keep them in about the same condition they are now, would amount to $150, and the material $150, with a total of $300. I believe there are two post offices along this road—St. Elmo and Romley.

These mines are not working to any extent at the present time. I cannot say as to an increase in ore shipments—that seems to be a question—but judging from what I have seen up there (and) at other places, the outlook does not look very bright to me for ore shipments. I think the prospects for an increased traffic are very discouraging.

[fol. 158] By Mr. Whatley:

I have been in the State for quite a while. As to actual experience as a miner I haven't had any. I base my opinion as to future mining traffic on conversations with others in different parts of the State and what has happened in the last two or three or four years—what occurred in 1920 and 1921, and since then—and judging from all of that and what I see of the Romley branch, it does not look very bright to me. I know that since last April the mining business has been very low on that particular line. I believe it has been low generally throughout the State and nation.

Whereupon applicant announced that it had no more direct testimony to offer.

Thereupon, protestants moved to dismiss the case on account of insufficiency of evidence. Motion denied and exception noted.

GEORGE E. COLLINS was thereupon called as a witness for protestants, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is George E. Collins; residence, Denver, Colorado; occupation, mining. I am a regularly licensed and practicing engineer in the State of Colorado, and have been so engaged since October, either 1894 or 1895. The date is not certain in my mind. I have for a long number of years been engaged in the practice of my profession here. I am familiar with mining conditions in general throughout the state. I am governor of the Colorado Chapter of the American Mining Congress, and I am a member of the executive committee of the Freight Rate Committee, of the Colorado Metal Mining Board, which is a State Board, and the Colorado Metal Mining Association. I am familiar with the smelting and treatment and reduction conditions of the metalliferous ores as they exist in Colorado at the present time, and have been for many years.

I am familiar with the territory served by what is referred to here as the Buena Vista-Romley line of the Colorado & Southern Rail-

way Company. I have been slightly acquainted with it for something over twenty years; I have been very closely acquainted with it since the fall of 1910.

I am Manager of the Mary Murphy Gold Mining Company. It's office is at Romley on this road, and the mine operations surround Romley, but the greater part of it is about a mile from Romley on Murphy Mountain.

The present condition of the Mary Murphy Mine is that work is being conducted only through leasers in the upper portions of the [fol. 159] mine, where the ore is oxidized or partly oxidized. That has been the condition since September or October of 1919, when the mill was closed down. That mill was closed down mainly because of the loss of the market for zinc concentrates, and that was not entirely but mainly a result of the increased freight rates, because the type of zinc concentrates which we produced at the Mary Murphy contained gold and silver and copper and after treatment in the distillation plants, the residues had to be shipped back again to Colorado for smelting, producing bullion which again had to be shipped back to the East for refining; so that with that particular class of product the effect of the increase of the freight rates was, generally speaking, trebled—it was cumulative—and for that reason the shipments of that class of zinc concentrates, both from our property and from most of the other properties in the State, stopped at or about that time, and have not since been resumed.

The element of freight rates is an important item in the operation of these properties, but it is not the only one. It is indeed a combination of various conditions. Another condition that very seriously hampers the operation of the Mary Murphy Mine was the progressive increase in the cost and decrease in efficiency, of labor, which commenced even as early as the Winter of 1916, and increased through to 1919, reaching, I should say, its culmination in the year 1919. There was a very large increase in the cost of supplies, and in the cost of smelting treatments too, both of the crude ore and concentrates, but that increase in smelting treatments was very largely due to increases in freight rates on coal and coke and lime rock which the smelters used in their business. There has been a considerable depression in the price of zinc, lead and copper, but while that is true, that has been partly off set by an increase in the price of silver; so that to say that lower metal prices as a whole are responsible is not correct, because silver increases to a very considerable extent made up for the others. So it is a combination of all these things that has caused the present depression.

The condition which I have described as concerning the Mary Murphy Mine is a similar condition to that which has confronted the greater part of the mining industry throughout the State. There are some mines which produce mainly silver, and make high grade concentrates that have not been affected as badly as we have. The gold mines—the mines that produce nothing but gold—though they have been badly hit, have not been as badly hit as those of us who are dependent upon shipment of ore to the smelters and

treatment of the smelters. We have been hit ourselvs, and you will find that the districts in the State that depend mostly on the shipments of ore to the smelting plants, are those which have suffered worst of all.

In my opinion, the depression which has been caused by this combination of causes has a little more than reached the bottom. Some of the conditions are entirely terminated. For instance, the cost of mining labor is very nearly now down to the pre-war figures, and the efficiency of labor is now about equal to that of 1915. The price of silver, thanks to the Pitman Act, is fixed at a minimum of a dollar for the period which I should estimate as three years, and the prices of copper and lead, according to the universal opinion of those who are competent to judge, are on the up grade. Zinc [fol. 160] will not increase in price for perhaps another year, but after that, all metal prices are almost certain to go on advancing for a period of years after that.

Prior to the time we closed our property in 1919, we were actively operating, though we had made the mistake of continuing operation longer than sound policy would have dictated. When costs went up to such a point, and the efficiency decreased to such as it did, I can now see that it would have been better policy to have closed down at the end of, say, 1917, but we did not think so—we kept on struggling with conditions which turned a profit into a loss, and a loss that went on increasing; so that we expended in operating losses all of our surplus. Prior to that we had quite a comfortable cash surplus. We spent all that. We gouged out some of the best of our ore reserves in order to try and meet expenses; and we went into debt somewhat in addition before we finally closed down. The objection was that we knew we should lose our organization, and we knew that parts of the mine would go on caving if we closed down. Moreover, there was some little influence exerted by the requests that were made by different government officials, you know, to keep going. That always was somewhat of an influence.

Now, when I spoke before of the conditions which I think are improving, to my mind, the principal one is a very favorable development in metallurgy. Definite proof and certain data which are within my own knowledge and that of a great many other people have been worked out by the expenditure of a great deal of money by very, very capable people and they are about as certain as anything in scientific metallurgy can be, and the result is going to be that within a comparatively short time the complex ores bearing zinc, lead or copper, gold and silver are going to be more profitable than they ever have been heretofore. That will benefit considerably in the treatment of ores, almost the entire section around the Mary Murphy Mine. Perhaps it would be a more direct benefit to that section than to most other districts in the State.

According to the books which I examined at your suggestion, the Mary Murphy Company has an investment in its property on this Buena Vista-Romley line in the neighborhood of two million

dollars. In my judgment, if this line should be abandoned—the service suspended and the tracks torn up, this investment would be finally lost. In my judgment, which is based on considerable study of the particular problems and considerable experience in handling ore with trucks elsewhere, it would be impossible to handle ore from the Mary Murphy Mine to the railroad—the D. & R. G.—excepting for a period which we place at the outside at about six months of each year, and even then the cost would be so great as to be prohibitive; it would more than swallow up the margin of profit that we have had at the Mary Murphy excepting during parts of two years. During a part of 1915, and a part of 1916, the profit was enough so that the cost did not swallow it up; but under normal conditions, when we were making profits, the cost would be more than swallowed up by the extra cost of teeming to haul by road.

[fol. 161] During the luncheon hour, I looked up the ore shipments from the Mary Murphy Mine during the years 1920 and 1921; during 1920 there was 2,516 tons of ore shipped to Leadville; 1921, 2,094 tons. These are shipments since we closed the mill down and since the property has been on a leasing basis. Prior to that time, shipments were considerably heavier, both as to incoming and outgoing freight.

The conditions which I have described as concerning our property in the event of an abandonment of service on this line and tearing up the tracks, would be applicable to all other companies operating in that section and all companies having properties in that section excepting any mine that might have bodies of very high grade ore; and even with the high grade ore, the closing of the line would be a very great burden—a burden which they have not now—a burden which would be insuperable.

I am familiar with the present method of handling the United States mail in that section, and I don't think it would be very easy to make any arrangement with the United States Government for handling the mail in the event of the abandonment of this line of railroad; because my experience has been in the last few years that whenever any mail service outside of the agricultural regions is terminated, it is very, very difficult to get it reestablished. I am afraid there would be practically nobody that would live there if this line were removed. The population now is very much less than it was when the mines were operating. In 1916 and 1915, and probably in 1914, the number of men employed at the Mary Murphy was from 175 to 200, and now the total number of men employed is between 15 and 20. It is, I believe, closer to 15 than 20. When mining and smelting conditions come back again, we will employ many more men than we have there now. In fact, a very small change at this time—a relatively very small change—in freight rates and treatment rates at this time would about double that tonnage we are shipping now.

I was over this line of railroad I think twice shortly after 1900, but I was not familiar with it until October, 1910. My knowledge as to the principal character of the business is merely what they were handling in October, 1910. At that time coal was the great

business. That coal came from the other side of the range—from Gunnison County—Either Crested Butte or from Baldwin. At any rate, the tonnage during the month of October, 1910, seemed to be, by observing the trains going over the line, very great. At that time we got our coal from the mine from Baldwin. At the present time we get it from Baldwin and Crested Butte. It used to come across the range and now it goes around by Gunnison, over Marshall Pass, Salida, and then Buena Vista, and then it is pulled up from Buena Vista, which means a much longer haul and much more expensive, and also the losses are very considerable through dusting, and also as to domestic coal. During the last two years, ores from this section have been shipped entirely to the Leadville Smelter. There is only one Smelter in existence at this time, and that is at Leadville; the A. S. & R. Company is concentrating all of its business at one point, and according to the chairman and other members of the Board of Directors who were out here, and whom we conferred with recently, that is their final and set intention, so that there is no outlet—no smelting point for ore—in this entire region excepting Leadville, and there will be in [fol 162] the future, so far as can be seen, only one outlet. Now that means that all the ore from Gilpin County, Clear Creek County, Boulder County, Park County, to reach a smelter at all, has to come first to Denver, then go around on the Rio Grande by Pueblo and Salida to get to Leadville, or else have to be taken up on the South Park line of the Colorado and Southern to Como and then over Boreas Pass down to Breckenridge and then around up over Fremont Pass to Leadville. Those are two of the highest passes in the State, and I think the two steepest grades of any roads that are operating anywhere in the State. If the Gunnison District was operated from Como or Garos to Buena Vista, there would be a direct route over the South Park road to the Denver and Rio Grande at Buena Vista, and the ore from the Eastern Slope—Gilpin, Clear Creek and Boulder—could go to Leadville without trans-shipment, and over a road which could be kept open at all times in the winter and with fairly decent hauling conditions, and taken on narrow gauge tracks right to Leadville, right to the smelter, instead of hauling it twice over the Continental Divide, or else going around by Pueblo and Salida.

As to the condition of this line of railroad from Garos to the top of the hill overlooking South Park—I think it is what used to be called Bath—Hilltop. There is another Hilltop—Hilltop Junction. I have only seen the road perhaps in half a dozen places. Where I have seen it, it is still in place. From there coming down Trout Creek. I should say that two-thirds of the track is missing. I should say that probably you can see where two-thirds of the rails have gone, and portions of the track that are left are high up on the original roadbed, and then you will see portions for several hundred feet where there is not a sign that there ever was a railroad. Then from there to Buena Vista the road is in place and in usable condition. I think most of the roadbed from Bath to Buena Vista—pretty nearly half of it—is buried up in the wash around the bottom of Trout Creek.

In my opinion, the Mary Murphy Mine is not a worked out property. That is to say, the upper workings were supposed to be worked out when I first saw the mine, but since then they have produced a great deal of ore and the prospects for ore are about as good now as they were then. There is no doubt that there is a future tonnage for the railroad company, and a future profit for our company. With the other mines in that section of the State that I know—I don't know them all, but I have personally examined a very large number—and I have reports from my assistants for a large number—I am speaking of the other mines around St. Elmo and up there in Chalk Canon,—excepting in a few cases, it depends entirely on the advent of conditions under which complex ores will be valuable. A great many of them show outcrops of ore which, if you take the value of zinc, lead, copper and silver, is ore of good grade. It is merely a question of having conditions under which that ore can be commercially worked. Those conditions heretofore have not existed. I think one of the first successful attempts to handle ore of that type and get paid for zinc as well as the other constituents, was that which was made by the Mary Murphy when we designed the Mary Murphy mill in 1912. That was successful, but it was only successful to a small extent. The developments that have taken place since, in my judgment, constitute a far greater degree of prog- [fol. 163] ress than that which was made then. So that in my judgment, the undeveloped mines around St. Elmo and Romley—or a great number of them—will be successfully worked. Low tonnage on this line of railroad at the present time is due mainly to the present mining depression of which I have spoken. It is partly due, in my opinion, to the Colorado and Southern road. I mean by that, this: That there is not and never has been any encouragement to do business there. We have always since the first—and when I say "we" I mean the Mary Murphy Company—since the first few years we have always operated under the threat of closing of railroad facilities. It has been a constant discouragement to putting in money, labor and thought to the development of the district, and right now the anticipation of this proceeding has, to my knowledge, deterred a number of men who said that they would have taken leases during the past year and would have increased this production—they have been deterred because they thought as soon as they did it the railroad would shut down and they would not be able to ship the ore that they opened up. So that in my opinion, the Colorado and Southern Railroad is largely responsible for the small tonnage that they have to handle, and I think, moreover, that if they made rates that would move the lower grade of ore, that a great deal more would move—I am sure a great deal more would move.

This line of railroad between Buena Vista and Cascade runs through a succession of little ranches. Cascade is above Mt. Princeton. The Mountain basins at the head of Chalk Creek are capable of pasturing in the summer only, a very large number of cattle—cattle and sheep. I suppose in the last two or three years there has probably been something like 10,000 head of sheep pastured up there. Now they don't move by railroad. The sheep-herders claim it is cheaper

to drive them in than use the railroad. I mean they are driven into that immediate vicinity. It is particularly in my mind because last year I once passed a single herd of sheep and got talking to the sheep-herder, and he challenged me to guess how many sheep there was in his herd and I guessed there was 4,000 and he told me that I was within a few hundred of guessing right. When I say these are not shipped by railroad, I mean that they are not hauled up there by this line of railroad. Those that are taken out to market are also driven out but I do not know where they are shipped from. This automobile road that extends from Buena Vista up to St. Elmo is an automobile road in the summer. I am very familiar with that road. I have ridden horse back up it hundreds of times. It could be traveled by automobile from Buena Vista to Romley on an average—in an average year, for about four or five months. Last year it was open for automobiles later than I ever saw it before. In the winter it is always blocked with snow, and it would be impossible for an automobile to make it at all. No automobile has ever traveled over that road up to Romley in the winter. In the winter I ride horseback. The road is nearly all down in the bottoms, whereas, the railroad track is up on the hill-side and the snow drifts down in the bottoms; so that in the winter I do not attempt to follow the course of the road—you couldn't even tell where the road was. I even go up on the railroad and travel on that. For practical purposes it would be extremely expensive to use that road in the winter months; even [fol. 164] in the summer months it would be expensive to do that. It is just an ordinary mountain road, gravelly and hilly. The pitches are pretty steep; they are pretty bad with an automobile. Even with my own, there is one or two places that I have had to back up and go in low and try again once or twice.

St. Elmo is a shipping point for what is known as the Grizzly Gulch Section and the Tincup Section. Those are mining districts. Romley is the name of the siding at the Mary Murphy office, and Gulf is the siding at the Mary Murphy Mill. They are two-thirds of a mile apart. I have been over to the Taylor Park District several times. I don't know that that would constitute familiarity. I have examined a number of mines in the Tincup Section. The shipping point for these Sections is St. Elmo. The practical point would be St. Elmo. No ore has ever been shipped anywhere else that I know of, and it would be difficult to ship anywhere else. These are extensive mining sections, especially in the Taylor Park country. It is an almost undeveloped mining section. Tincup in the past has been productive. From the town of Tincup to St. Elmo is fourteen miles. Of course, the mines are about eighteen miles from St. Elmo. If this railroad service is abandoned, and the tracks torn up, I don't know what those sections would do. They might try to haul to Aspen. That would be about forty-five miles I should think. It is quite a long way. It would be almost the same distance to haul it to Buena Vista. I think Buena Vista would probably be shorter than Aspen. The practical effect would be that those sections would simply go out of business; I think they are pretty nearly out of business now, but they would never come back. Practically all min-

ing sections are more or less out of business now I am afraid. The total tonnage of ore in the State last year was something like one-quarter of what it was in 1916.

Thereupon the witness was temporarily excused to accom-odate two witnesses who were anxious to get away.

C. P. LINK was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is C. P. Link, residence, Denver, Member Colorado Tax Commission. As a member of the Colorado Tax Commission I have the assessed valuations of The Colorado & Southern Railway Company for tax purposes. Those valuations are usually figured upon a mixture of securities and earnings, and to some degree physical values of the companies. In other words, the Commission attempts to take all of those things into account to the end that we comply with the Statute requiring a full cash valuation of the property. The figures as given are sworn to by some officer of the company. The Colorado valuation of the Colorado & Southern Railway Company for 1920 was $23,981,720; for 1921 it was exactly the same. That includes all the physical property in this State as shown by the tax [fol. 165] records, insofar as that property is used in the operation of the system and includes non-operated track or sections.

In distributing the taxes to the various counties of the State we first arrive at the value of the whole system and that is distributed over the system in the whole state in proportion to the number of main track miles, both operated and non-operated. The distribution of that total tax value in Chaffee County would be on a basis of both operated and non-operated track mileage in that County. Taxes paid on the Buena Vista-Romley line in Chaffee County do not necessarily represent the actual value of that line, and if the value of that line is less than the main line broad gauge, then the taxes allocated to that County would be in excess of the value, perhaps, of the narrow gauge, but would tend to refuse the taxes paid on the broad gauge.

Cross-examination.

By Mr. Whitted:

The method which I describe is something required by the statutes of the State. The distribution of the valuation is purely by statute; we have no option in that.

Redirect examination.

By Mr. Whatley:

I was about to say that we have some power or discretion in the matter of determining these values. As we construe the statute, it

requires the actual full value, and to arrive at our judgment of what is the full value of a corporation, we may take into consideration all elements that enter into it—physical property, capitalized earnings and everything.

By Mr. Whitted:

The Romley branch is assessed at the value of $31,414 per mile for last year. For twenty-eight miles, that would be 28 times $31,414 for the valuation of this piece of property for the purpose of taxation in that County.

By Mr. Whatley:

The value to which I have referred is the distribution as allocated to this particular branch. I have no figures as to what value we actually placed on this Buena Vista-Romley line in determining the gross value of all the Company's property.

By Mr. Hartenstein:

The total tax valuation figures for Chaffee County include the part of the road east of Buena Vista not now operated, but that is not in- [fol. 166] cluded in the twenty-eight miles referred to. The same valuation is put on non-operated portions—the Trout Creek Section. My information is that that portion has not been abandoned. The company would not pay taxes on it if it were released from the securities.

By Mr. Whitted:

I am sure it has not been operated for about 12 years, to my own personal knowledge. I have lived at Fairplay, up in that section, for many years. I also lived in Chaffee County at one time. I should think the line has been abandoned from Garos West to Buena Vista practically since 1910; I thought a little longer than that; about three years ago I drove down Trout Creek Canon. The track—the right of way—is practically destroyed all the way from the head of Trout Creek down to the mouth of Trout Creek Canon. I thnk it is in pretty fair shape from Garos and more or less in relation to the mouth of Trout Creek Canon to Buena Vista.

By Mr. Whatley:

I don't recall the mileage. I should say about 12 miles is pretty well demoralized. I am not at all accurate it has been so long. But in making up our tax values, that is included just the same as Garos and other places.

FRED WALLACE was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

"My name is Fred Wallace, residence, Denver, Colorado; I am Auditor and Statistician for the Public Utilities Commission of the State of Colorado. I have recently made a general audit of the operating revenues and operating expenses of the Colorado and Southern Railway Company for the year beginning August 1, 1920, and ending August 1, 1921. Exhibit 16 correctly represents the operating revenues and operating expenses of the Colorado and Southern Railway Company system for that period of time. These figures cover the entire system both within and without the State of Colorado. The company's business is all handled under the same accounts. There is a distribution as between districts. That is a record kept by the company for statistical purposes. Otherwise the various lines and branches are managed from the same office, and run and treated as one system. That is true of all lines, including the Buena Vista-Romley line. Of course, I did not investigate the Buena Vista-Romley branch at that time; but I found, in the investigation I did make, no separate, distinct accounts for other branch lines, except the one for statistical purposes.

Cross-examination.

By Mr. Whitted:

When I say the Company does not keep distinct accounts, that has [fol. 167] reference to the different districts. These distinct accounts are allocated—that is, certain portions of these accounts—these are certain expenses that have to be allocated. Of course, there are certain expenses that apply to each district, that are charged directly to those particular districts. There are other expenses that have to be allocated, and those, of course, are allocated to the districts to which they belong. The figures contained in Exhibit 16 are correct. (Exhibit 16 was thereupon offered and received in evidence.)

By Mr. Whitted:

I made this exhibit in connection with an application of the railroad to reduce the train service between Denver and Leadville. We have no report of the railroad company to the Commission covering this same period of time. I went over the revenues and expenses, as shown by the Railway Company's books, for the Denver-Leadville line at that time. There were some slight changes that I made. They were of minor importance, however. In respect to revenues I found some revenues—or an allocation of revenues—that had been credited on the allocation sheets to other towns: for instance, you will have an allocation sheet here, possibly half the length of this table, giving your different towns, and you are making your allocation of your expenses, or your revenues, from your freight bills, and you are likely to give it to one when it belongs to another. That is a clerical error, that is all.

By Mr. Whatley:

In going over the accounts I found there is an account showing the revenues received as a guarantee from the government, under the act guaranteeing the railroad against losses for a certain period after it was turned back by the United States. There was a revenue therein.

WILLIAM RUSSELL was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is William Russell. I am a granite cutter; have been in the granite business since I was 14 years old; that would be 22 years. I own a granite quarry at Salida, Colorado, and have a claim at Cascade on the line of the Buena Vista-Romley branch of the Colorado & Southern Railway Company. We have 20 acres there. It is a good commercial granite; I think so, else I would not be there. I have talked to the Colorado & Southern Company about handling that granite for me. I went up to Mr. Johnson's office in 1920 and asked him about a rate for hauling that granite to Denver. At the same time I stated to him that there was a likelihood of considerable granite work in Denver, and I make reference to the Capitol office building, which was gray stone, that was supposed to be a pretty good proposition, and I got no encouragement. Mr. Johnson didn't happen to be there—it was his assistant—and I asked him for a rate, and he told me fifty cents a hundred. I told him it was [fol. 168] strange, I could get a rate of seven cents a hundred on the Platte Canon, and I couldn't see how I could do anything with fifty cents a hundred. He said, "We don't care if you get any business there or not." So I didn't do any more with it; all I have done is the assessment work. That would have meant, if I had shipped it, I imagine two or three hundred carloads of stone for that building alone. That doesn't take out the monumental part at all. That is one building.

Cross-examination.

By Mr. Whitted:

This granite quarry is at Cascade, a mile and a half or two miles from Mt. Princeton. It is right practically at Glendale, I think they call the station. All the granite we ever took out of it was enough to see that the stone was all right. We have never quarried any nor shipped any. That was taken out about the month of July, 1920. I have another granite quarry over near Salida. That is not the same kind of stone. One is black and the other is white. There is a likelihood to be more quarries up there than the one I mentioned; they are awaiting a decision in this case. A man by the name of Wea shipped granite out to Denver for the gateway at 17th

Avenue for City Park. This granite is about six miles from Nathrop. It would be a six mile haul from the Quarry to the D. & R. G. broad gauge. I thought it was all down hill but I am told different. There is one hill there after you pass Princeton—between there and the main road there is quite a grade. You follow down Chalk Creek until you come to this grade, and you practically leave Chalk Creek from that grade. I have never shipped any granite out of this place. I couldn't see the 50 cents a hundred. There is nobody employed there at the present time. I mean 50 cents a hundred from the switch at Glendale to Denver, not to Buena Vista. That would be from the quarry down to the Denver and Rio Grande line, and then through to Pueblo, Colorado Springs to Denver. We should have a dray and hoist ready to ship up there, but when I saw a notice in the paper of the application to abandon this line, why, of course, the stuff is still there. I ship from Salida to Denver at the rate of 15 cents a hundred. From Salida we haul 12 miles at the rate of 65 cents a foot by team to Salida; then 15 cents a hundred from Salida to Denver. We couldn't haul this down here (Cascade) because we cannot get the same price for it. One is white and the other is dark and the white is for monumental purposes. The Salida Granite is dark. That is a higher grade granite for which we get a higher price. One is $2.75—f. o. b. Denver,—and the other is $5.40, just about half. But I do haul one of them twelve miles and the other I would only have to haul six.

By Examiner Gault:

I have had that claim since 1919. If this railroad should be maintained there in the future, that drag will be up there inside of 60 days. The stuff is all there to be cut. Of course, that building job that I spoke of—the office building—is Texas Creek granite. That is not in the market. But the Federal bank building—I don't know what it will be, but it may be white granite or red granite, but as far as that is concerned, this white could be used for a base, in [fol. 169] place of shipping it in from Georgia. It would take some months to figure how much granite there is there. It is as big as this Post Office Building. There is enough for five or six generations in my estimation. I am guessing from the quarry around which I was raised, which has been operated since 1842 and it is in operation today. And this is as big as that. There is a steady demand for granite in this country. That is all I have done since I as 14 years old, and I am still at it.

By Mr. Whitted:

I did not ask the Denver and Rio Grande for a rate from Nathrop. I asked the traveling agent how much of a rate it would be from Buena Vista and he said, 'You had better see the C. & S.' I said I had, and I couldn't do anything with them. He said the two of them might get together. I understand that one party since then was offered a rate of 24½ cents, but that was not me. That was hearsay. That was right from the C. & S.—Cascade to Denver.

The majority of the Colorado granite shipped into Denver comes from Salida and Texas Creek on Cotopaxi on the D. & R. G.; from Platte Canon on the C. & S. which is a pink stone. That is 40 or 50 miles. They ship into Denver from Georgia. That is a white granite. In this state they used to ship from Arkins, in Larimer County about 40 or 50 miles from here. I do not know of any other places within the State from which granite is shipped into Denver. When I spoke of the demand I spoke of the state office building simply because of the building granite—the big building. That thing ran for nearly 18 months. It is practically completed now. The exterior is, but the interior is not yet.. The federal bank building is not being constructed in Denver at the present time, but that is in the wind, as you say. I do not not know of any buildings that are being constructed of granite. I do not know of any building in Denver, except the State Office Building, that has been constructed of granite in recent years. That is the only building that has been built here for a great many years out of stone. Of course, take the U. S. National Bank, there is a basement there. That is all within the last year or so. That is a basement 2 feet 6 or three feet high. I ship granite to the Colorado Wholesale Granite Company.

By Examiner Gault:

If we had to haul to Nathrop it would be 6 miles. If we haul to the C. & S. at Cascade the switch is just around the corner, not over half a mile.

By Mr. Whitted:

I am familiar with the source of the granite used in the construction of the Mint in Denver. Part of it came from Arkins and part of it from Platte Canon. I am familiar with the granite used in the Post Office at Colorado Springs. That came from Platte Canon. As to available supplies of granite on this side of the range, it is all according to taste. One is pink, the other is white. They do not use the pink at all for monumental purposes. There are two quarries on this side of the mountain range, one in Platte Canon; the other at Arkins.

[fol. 170] By Mr. Whatley:

Most of the granite shipped in here is used for monumental purposes in the City of Denver.

GEORGE E. COLLINS, heretofore called and sworn, resumed the stand for further direct examination.

By Mr. Whatley:

As bearing on the cost of transporting ore from Romley or St. Elmo to Buena Vista by truck or team, it costs us $2.50 per ton to haul ore from the upper workings at the mine to the C. & S. at Romley or St. Elmo. This is 2½ miles by road. The distance as

the "crow flies" is a mile, but the road goes around. I have not made any specific estimates as to the cost to haul ore from St. Elmo to Nathrop or Buena Vista, because I regard it as out of the question, but I have had considerable experience in other districts and I have the figures from other companies that do a great deal of road haulage, and according to those figures, the general cost over mountain roads of hauling by truck, including depreciation, replacement of original equipment, maintenance of operating, averages 40 cents per ton mile. When you have roads that will stand very heavy trucks, you can cut that down somewhat. When you have roads that have few or no curves, so that you can use more than one trailer, you can cut that down, but that would not apply to the roads in question. The cost of hauling coal and other supplies up from Buena Vista or Nathrop would be very much higher than that, because some of the grades are such that you cannot take any load up in a truck to speak of. The matter of hauling coal in would be quite a large item even if we could haul ore by truck; it was with us, and for a period of time, when we were running our mill, the tonnage of coal hauled up to the mill was pretty nearly as great—virtually as great as the tonnage of concentrates shipped out. Even if we could haul the ore out we could not haul the coal back up to the mine if we were operating the mill. Before we could haul crude ore out of there it would have to be a pretty good grade; it would have to be different from anything we are shipping now.

I cannot tell you what the smelter rates are throughout this state. It is a matter which is kept secret and as to which information is not given. As to our own smelting rates from the Mary Murphy, they are considerably more than double at this time than they were. The minimum freight rate from the Mary Murphy used to be a dollar and a half, and is now $1.90. That is based on the gross value. But the effect of the gross value is this: That what interest the miner has is the value he gets for ore. Now, the gross value means that value that the man gets, plus the freight, plus the treatment, which is usually much greater than the value. So that by basing rates on gross value, you have a nominal rate applying to your lowest grade of ore, but you cannot ship any ore on it any more, because the gross value has increased, because its treatment is more than double what it was, so that we can no longer ship very much ore that comes in on the minimum rate, and therefore in that way most of our shipments come on the higher freight rates.

[fol. 171] I would like to say one thing: This question which is befor- you today is not one that affects only this particular line—it affects more or less all of the roads serving the mineral regions of this state. Throughout the central part of this state, the only industry—the one substantial industry—is mining. If mining ceases, the central part of the state will be depopulated. Now, the entire tonnage, according to figures given me by the United States Geological Survey, of ore handled in this State was last year a little more than one quarter of what it was in 1916; with the exception of one mining district, and one mine in that one mining district, it is true of every district in this state that the tonnage has enormously de-

creased—that the prosperity of every other mining district has enormously decreased, and that every mining district in greater or less degree is threatened with extinction. There are narrow gauge roads serving mining districts that are in worse condition than this one, where the shipments have fallen off to a greater degree than here. Now, if the same rule is to be applied to every one, the inevitable result will be that something like half of the remaining roads to the mining districts will be closed. Now, the smelting business is practically restricted to one smelter—the one at Leadville. The one at Durango is still running, but it is threatened with closing down, and almost certain to be closed down. If the tonnage at Leadville is much further reduced, it will not be possible to even operate that one, then there will be no market at all. A few years ago we had a number of smelters in this State. One after the other has been closed down as the output of the smelter was decreased. If you reduced it below the one, there will be none at all, and that means that the mining business of the State ends.

Cross-examination:

By Mr. Whitted:

The Mary Murphy Gold Mining Company owns the Mary Murphy mine. I am now the President; the president died and there was nobody else to take that disagreeable job. I believe the present company was organized in 1908. I am not sure of that. That is my belief. I cannot tell you from my own knowledge when ore was first discovered in that mine, but I have been informed and believe it to be true that discovery was made in 1874. That mine has existed for a very considerable number of years. The company is operating today through its leasers. The ore is being mined by leasers, but the Company has handled their ore—it supervises the leases; it is merely a way of paying the men for doing the work. The company is having the work done by lessees, who each have a small piece of ground. There are only three parties of lessees today—three different parties—three different groups, you might say. I don't know how many men are mining in the property today, because I haven't been up there for more than a month, but I believe that the number today should be 15 plus one employed by the company. That would make 16 altogether. But that may be different at this moment, you understand, but that is about correct. There are other mines working up there today; there is Rarus Warrior to my knowledge. According to letters I have received within the last few days, they have been developing ore and have opened up an important ore body. I have not seen it myself. There has not been any shipped from that mine for, I believe, 20 years. All the ore that we mine there is shipped to Leadville for treatment. Our company erected a mill there for the treatment of our own ores [fol 172] in 1912, which commenced operations in 1913. We closed the mill down, I believe, it was October, 1919. That was a mill for concentrating and separating the ores into different classes. The

result of concentration is to reduce the tonnage of ores shipped out, and to separate into different kinds. Where we concentrate our ores and ship merely our concentrates, there is no business for a railroad company excepting supplies to go in and the concentrates which it would haul out. The resumption of our mill there would not be likely to reduce the tonnage; indeed not. For this reason among others: That the ore that we are now shipping is ore which would not concentrate—it is oxidized—it would not concentrate.

One of our leasers has been working, I should think, a little more than two years; one party for something over a year; and one party for about two months; but he is a man who was working previously with one of the others. We haven't the ordinary contract under which the leasers pay us a certain proportion of their net or gross returns; we handle everything, and give them a portion after we deduct the different costs that we have against them. We furnish them their supplies and everything of that kind. In the ore we are shipping now the gold is the main valuable constituent. The number of ounces in a ton is according to the average we ship. I don't happen to have last year's value, but it was about three-quarters of an ounce, but when I have not specially verified my point, my memory is not always exact. That is my recollection. That would make the value of the ore around $16 as far as the gold content is concerned. This ore has some silver in it too. If this is a matter of importance I will be glad to get the settlement sheets and give the exact figures. Roughly speaking, the silver, I believe, averages between 8 and 12 ounces; it is close to that. There is nearly always some lead, and unfortunately some zinc—usually, but not always. Our report to the Bureau of Mines for the year 1920 gives the average content of the ore as 12 ounces of silver, 7 per cent of lead; that is no doubt correct. I shouldn't think there would be any copper in it. In 1920 zinc is about eight per cent; in 1921 we also have zinc. Some manganese, though we don't figure out the average manganese, usually.

The company, through an arrangement with other parties, did a great deal of development work in 1920, and some in 1921. The ore which we get out of that mine is refractory and heretofore impossible of real satisfactory treatment. The intimate mixture of different metallic substances in the ore makes that condition, particularly of ore with zinc. The ore that we shipped has 8 per cent. zinc, but the average ore throughout the mine would have, proportionately, a much larger percentage of zinc. The smelters penalize us on account of that content of zinc. They charge us more for the treatment of the ore because it carries zinc, when it does carry zinc. Some ore carries very little and some carries more. Above eight per cent. in certain districts, and above ten per cent. in other districts, the smelter charges 50 cents for each unit of zinc. That is because, on account of the presence of zinc, it makes it more difficult to smelt, and increases the losses in smelting. In smelting you do not get quite all the gold and silver, though nearly all; you don't get all the lead, because some is lost in the dross or slack, and you don't get nearly all the copper, because nearly all is lost in the dross or slack. The presence of zinc will increase this loss of the various metals.

The presence of zinc is one of the elements in grading the smelter charges. As the zinc goes up the charge goes up, because the presence of the minerals make the ore more refractory. I have not [fol. 173] given the percentage of the increase on account of the presence of the minerals makes the ore more refractory. I have not charges as compared to what it was a few years ago. Now, that is not on account of the presence of zinc at all. The smelters do not penalize us more on account of the presence of zinc than they did formerly. The zinc penalty is the same now as it used to be, excepting that prior to 1919—sometime in 1918—the Mary Murphy had no zinc penalty from the smelters, or, in other words, even if we shipped ore occasionally running as high as fifteen per cent. zinc, we would have no zinc penalty, but there was an understanding that our average zinc, month by month, should not be enough to trouble them—it should not be more than eight per cent. There was no direct understanding that they would penalize us if it did get above eight per cent, but there was this understanding: That they would kick, and we would have to make good to them in some way. Mainly it is the zinc that makes the ore refractory—the zinc closely combined with other metallic substances. Sulphide is the main reason why it is refractory to handle in the smelter.

We have not bought the supplies for this mine at Buena Vista. We get groceries and such things as that, but when we are running on a big scale we go mostly to other places and buy very little in Buena Vista. At that time, mostly in Denver and Pueblo. There is no other mine producing in that district at this time anything worth mentioning.

I couldn't give you the exact figures as to what we invested in that mill without looking it up. The mill was paid for out of a bond issue of $269,000. That paid for the mill, what we call the electrostatic plant, which is a part of the mill, and the tramway. We did not get quite $269,000 for the bonds, as I remember it. The mill itself, I should think, cost probably $160,000, and I think the electrostatic cost probably $30,000, and the tramway about 17 or 18 thousand dollars. An electrostatic consists of a number of sheets of metal arranged in stacks. Close to the metals there are little bars of brass, and from the bars to the sheets there is an extremely high tension of electricity—about 20,000 volts—passes all the time to separate some of the products—separate one from the other. We have the ore concentrated—very finely ground—and dried perfectly, and then run over these sheets, and in the presence of that electrostatic current, part would go to the sheets and drop from sheet to sheet, and part of it would be attracted by the bar and thrown out into the air and be caught into the receptacles. That is briefly what an electrostatic is. And we have made in that way a very imperfect separation of the zinc from the other constituents. We have outgrown that process, however. The purpose is to get rid of as much of the zinc as possible, and get it into a form that we could get paid for it.

(Whereupon a recess was taken until 9:30 A. M., February 4th, 1922.)

[fol. 174] February 4, 1922, at 9:30 a. m.

GEORGE E. COLLINS resumed the stand for further cross-examination.

By Mr. Whitted:

The company ceased milling in September, 1919. The mining of the ore in the upper levels for shipment to the smelters was always done mainly on the leasing system before that. That has been continued. That mine has been worked, when it has been worked, since September, 1919, by leasers, excepting that a great deal of work was done in 1920 and 1921 by the Company organization doing development work at the expense of another party. The mill was closed in September or October, 1919—I haven't looked up the exact date. The mill is in condition to be opened and operated, excepting for minor repairs. We did not close the mill in September, 1919, because of the zinc in the ore—there was no more zinc in the ore at that time than there had been previously. The main reason for closing was that the market for zinc concentrates ended. I don't recollect what zinc was worth at that time, but I can probably find it for you. (Referring to Book) Through 1919, Spelter varied from 6.592 to 7.679. That is cents a pound for Spelter. Lead varied during that year from five cents to 6.75 cents a pound. Zinc is worth now 4.75, or 4.78 and lead is 4.7. The copper in the ore amounts to something; when we operated the mill, copper was quite an important factor in one of the products we made. It is not in the crude ore. In the crude ore, there is probably an average of about seven-tenths of one per cent, but in one of the milling products we made, that copper ore raised up to four or five per cent., so that in that product it was quite important. The price of copper is somewhat lower than it was in 1919. It is considerably lower. It then reflected from fourteen and a half cents to 21 cents, and now it is 13.76 cents. In 1918 and 1919, the minimum we paid miners was $4.50 per day. I don't know about the cost today. You see, we are not mining. I know generally what the metalliferous miners are getting at Leadville. At the Mary Murphy we always use to be a little lower than the Leadville scale, and we were, I think, in 1919.—At Leadville the present minimum is $4.00, and that is going to be reduced on March 1, to $3.50.

I spoke of an improvement in the treatment of metals; that is an improvement in the treatment of the complex products preliminary to smelting—between, you might say, the mill and the smelter. In speaking of our investment, I said that the investment on the books was approximately two million dollars. I don't know, as a matter of fact, whether that investment was represented by $25 cash and the rest in stock at the time of the organization of the company. I don't think so. The greater part, I believe, of the stock capital issued was issued in exchange for the property, but I do not really know of my own knowledge, because I was not connected with the company at that time. I know nothing of the

data contained in the report filed by the company with the Secretary of State for the year 1917, but that statement was prepared by Mr. Robinson, the Secretary, and I think no doubt it is true. That report for 1917 also states that the new indebtedness of the company is to be 6% bonds, $169,000 plus current bills outstanding at the end of the year. I signed the annual report for 1920 and in that report I state that the amount of cash paid for the property was [fol. 175] $25 and the amount of stock issued for the property was a million eight hundred seventeen thousand one hundred seventy-five Dollars, together with $32,800 in payment of the company's note. In that year the indebtedness is stated, company bonds and accrued interest at $307,800; unpaid accounts with interest on the same, $64,625.47. I stated in my direct testimony that after about 1918 we operated for two or three years at a loss, spent all our cash surplus and incurred considerable indebtedness. I believe that is correct, and I can state why the amount of the bond was increased: The bond issue had originally been approximately, if not exactly, $269,000, as I think I testified yesterday—and of that, prior to 1917, or during 1917, $100,000 or more had been paid off and was still retained in the possession of the company. Now, when the company, during the time of operation at a loss, incurred indebtedness, it reissued those bonds which were in its possession to some gentlemen who acted as a creditors' committee, as security for the indebtedness that it had incurred, so that those bonds were then again outstanding. Now, that, together with the accrued interest, will amount, I think, for the increased amount. These bonds were issued to this committee merely as trustees for creditors—merely as security.

In the statement of the company for the year 1921, it was stated that the indebtedness evidenced by those bonds—that is, $307,800—is secured by deed of trust and the accounts payable are secured by some of said bonds and stock of another corporation which was deposited with the creditors' committee. I believe it is true that a large portion of these accounts are long over-due and the company has no available resources from which to pay them. I presume that our bonded indebtedness and interest accrued on it, together with unpaid accounts, amounted, when the 1920 report was filed, to something like $372,000.

There are two smelters operating in Colorado today. One at Leadville and one at Durango. The one at Durango receives ore only from the San Juan Region—Telluride and Silverton. When I came to the state there was the Grant, the Boston-Colorado, the Argo and the Globe Smelters in Denver. They are all closed now excepting that the Globe Plant is operating on intermediate products, both an accumulation there and intermediate products from the other plants which are brought here to Denver for treatment. The Pueblo smelter is not being operated at this time; it closed down at the time of the flood last year—the Pueblo flood. In the last two or three years the Salida smelter has been sold to junk men, and resold by them to investors who have mining properties. The Salida smelter was closed, as I remember it, at the end of 1918

or the beginning of 1919. You might say that only one smelter is now operating in the state, because Durango is not available for ore excepting from the San Juan Region, and that Durango is expected to be closed down at any time.

I don't recollect all of the freight charges prior to Government control and the freight charges as they are today. I could have given them easily, if I had known what you wanted. I could have given those all correctly. The minimum freight is what I have had in my mind. Prior to the Director General's order, the minimum rate was $1.50. That was first increased, as I remember, to $1.90, then to about $2.30 or $2.40; then it was reduced, in consequence of representation made to the traffic department of the C. & S., to $1.50. That stayed in effect for about three weeks, until [fol. 176] they discovered that they had agreed to that without meaning to, and it was put back to $1.90; so now, it is $1.90 for the lowest grade ore that is produced; I forget the exact point at which that—to explain what that freight rate is, you have to read on a great deal more, because it is not really on value declared. It is only on the gross value. The released value is merely to limit the liability of the carrier.

The Tincup Mining District is connected with St. Elmo by a mountain road. It is over the mountain; it goes over quite a high elevation. I believe there are some leasers prospecting around Tincup, but very few. I believe that all the shipments from Tincup have always come to St. Elmo; there is no other outlet. They are hauled over the mountain in wagons or sleighs. I don't know the extent of the mining in the Tincup Region at the present time with the exception that I believe there are some men there who are developing or prospecting, but not a large number; that is also true of what is called the Grizzly Gulch District. That is not over the mountain; that is reached by a steep road which runs up following Grizzly Gulch from St. Elmo. It is over a Divide, though. There is no shipping mine at the present time in Grizzly Gulch. Taylor Park is over the same divide that Tincup is. It is really north from Tincup. I said it was 18 miles from most of the mines around Tincup to this road. Tincup itself is rather closer, but most of the mines are some distance from Tincup town. I don't believe any mine is shipping at present from the Taylor Park Region.

The smelter rates have been very seriously increased in the last five years. There is no reduction at the present time from the high point in the case of most ores. There are promises of reduction As a matter of fact, it is true that the smelter rates have gone up very much and have remained still very high for the treatment of ores of this character. I should like to add to that answer that we are informed by the Directors of the American Smelter and Refining Company, and believe it to be true, that the principal reason for that increase is the freight rate they themselves have to pay on coal, coke, lime rock and supplies.

Out of the operation of this mine to leasers last year, we made an excess of revenue over direct operating costs, but it did not pay taxes, interest, etc. That was also true of the previous year. It has not

been true for several years before that. 1918 and 1919 we had a heavy loss. We operated at a heavy loss in at least two years, and I think we had a loss also in 1917. I am not sure as to 1917, but we certainly had a very heavy loss in 1918 and 1919. There are some shipments which we made to the smelter that would not pay the expense of mining the ore and the treatment charges—probably no considerable portion of the shipments, but probably a few of which that might have been true. The prospect would not be very inviting, considering the smelter charges, the cost of operation, etc., if there were reason to think that the cost of operation and the smelter charges were going to be permanent. I don't think they are. The mine owner has no control over that excepting that he has faith in human nature and supposes that eventually reason and common sense will convince even railroad men and smelter trusts. I should say that in the case of smelting charges we have very definite and specific promises, and if one could attach to promises the same value that other people would attach to ours, the result would be certain. Promises sometimes do not materialize in the mining business, the same as in everything else.

[fol. 177] Redirect examination.

By Mr. Whatley:

I think it is not true that the construction of a reduction mill or concentrating plant on the mine would serve to reduce the amount of business that the railroad company would have. In point of fact, when the Mary Murphy was operating its mill, its shipments of crude ore were larger than they have been since. The crude ore is almost entirely of a nature that could not be treated in the reduction plant, and in the cost of developing and working the type of ore that is needed for the mill, you are apt to open up bodies of the richer and more oxidized ore that is shipped direct to the smelter, so that the tendency is not to reduce the tonnage. Furthermore, the great bulk of the milling ore is of a character that could not possibly be shipped directly to the smelter at all, so the concentrate that we make in the low grade or milling ore is that much additional freight which is given to the transportation company. The mill also increases the supplies, such as fuel and things of that kind, that are used in the mine, that is, the incoming freight, and much more in proportion, because the milling business is one that needs a great deal more supplies, especially coal. Didn't I testify yesterday to the fact that when we were running the mill at the Mary Murphy, we used nearly a ton of coal to every ton of mill concentrates that we sent out? During recent years, I have had occasion to have communication and conference with officials of the Colorado & Southern Railway Company with reference to freight rates. I think that pretty near all the gentlemen connected with the C. & S. knew that I was connected with the Mary Murphy Company. No representative of that company, official or otherwise, did communicate with me or interview me as to the prospects for a revival of the mining industry in the section served by the Buena

Vista-Romley line, prior to the commencement of this action, or at any other time, as intimated in the answer to question 20 of the Questionnaire, or otherwise. As far as I know, they did not consult any official of the Mary Murphy Mining Company. I inquired and was told that nothing had been asked of any representative of our company.

Broadly speaking, it is a fact that the 1919 prices of lead, copper, zinc, etc., had dropped below the prices that were in effect during the years prior to that time. They dropped shortly after the War had ended, and dropped before that in spelter. Since 1919 it has been much lower than it is today. There is at present a tendency to improvement. That has been true for several months. And moreover, to some extent, intelligent anticipation can forecast the tendency in metal prices, and the universal opinion among those who are qualified to judge is that improving metal prices, particularly as to lead and copper, are coming. Prices of lead and copper have been lower within recent years than they are at this time. These are not unprecedented prices by any means and the trend is upwards.

This road pretty much from Mt. Princeton up runs through a heavily timbered country where there are timbered slopes adjoining the road and running off from it, and at different times there have been outfits of men cutting timbers and ties adjoining the road, sometimes shipping them out by the road. They told me there is a very large quantity of timber that is suitable for ties close to the road now. There is a great deal of timber, which, as to its suitability, I have not personally examined, but these tie-cutters have told me that there is a great deal of tie timber. The ties I saw cut [fol. 178] were good ties. There is a great deal of the standing timber that is very good timber. Much of it is splendid for lumber as well as ties.

The principal wash-out of the railroad in Trout Creek took place in or about 1914. It was several years after the operation of the road ceased. There was no wash-out up to the end of October, 1910. The last day before the road was scheduled to shut down, I noticed there was some very heavy trains running over the road with two or more engines and long strains of coal-cars. I don't remember counting them, but very long strings of coal-cars. I presume those were coal cars out of the Gunnison coal field; they came over the hill, right down the pass, over the road.

Recross-examination.

By Mr. Whitted:

I cannot tell you how much smelter charges have gone up since 1914, because we have—when I say "we," I mean the officers of the Metal Mining Association and the Mining Congress—have been unable, since 1917, when the Legislative Investigating Committee made its reports, to get from the American Smelting and Refining Company any definite figures as to the changes made. I can give you the rates as to the Mary Murphy Company. As to the Mary Murphy Company, they have more than doubled. I cannot tell you as a whole. I would like to know.

Most of the timber that I spoke of upon the mountain is in the United States Forest Reserve, not all. There has been no cut timber, to my knowledge, shipped out from up there, excepting for a sawmill that we contracted to be built up there—excepting for that, I don't think any sawmill has ever been up in that region for the last twenty years. In the old days there certainly were sawmills there, because you find evidence of them—the remains of them—all over, but I don't think there have been any since.

Last year the operations of our company were continued at a loss if you include interest charges and taxes, etc. Not without those. This ore is a very complex mixture, excepting that when it is highly oxidized or near the surface, some of the zinc is leached out and it is less complex. It is difficult to say whether there is a considerable quantity of this ore left. The upper levels of the Mary Murphy mine were supposed to have been worked out in the early days and were supposed to be completely worked out when I first went to the mine—at the end of 1910. Since then the upper levels have produced a total value of two or three million dollars, and so far as one can see they are just as likely again to produce. We had hoped to have some testimony on that point from some of the leasers, but there was a terrible storm up in that region—our representative there says the worst he ever saw—on Tuesday and Wednesday—and these men were afraid to come down. I had hoped to have testimony on that very point for you from the men who are working there. The Tincup Region is an old camp. There is no road from Tincup down to Quartz. There is a very bad road from Tincup to Quartz but it goes over a high Divide, higher than the one between Tincup and St. Elmo. That divide is not shown on this map. It is economically impracticable to haul ore over the highway by sleighs in the wintertime. If you had rich enough ore you could do anything. Such ore as we are getting out of the Mary Murphy, it would be quite out of the question. I know that road extremely well. I have been over it hundreds of [fol. 179] times at all seasons of the year. Usually, the road is not broken at all above a little old town called Alpine, and personally, I, myself, travel on horseback and it is so difficult to break the drifts in the road, that I do not try the road—I come up on the railroad tracks in the winter. They ordinarily operate the railroad in the winter-time; it is pretty easy to keep the railroad open. The railroad runs up on the side of the mountain where the snow does not drift quite so badly; down in the bottoms it drifts much worse. If the mining industry in this locality should turn out as I hope, the traffic thus originated would move entirely on this road. I don't believe that the data available would justify an estimate as to how many tons of ore would move a month; you come into the realm of guess. It is too speculative; It would be more like a guess. I don't believe I could make any estimate.

As to some ore mined in the winter time, it would be practical to store it and haul it out in the summer time, if you had money enough. During the whole of the winter, as to milling ore, it would be impractical. And moreover, there is this condition: That the smelter

would probably use that fact as a reason for still further increasing rates, because what they want is a uniform flow of ore. It is very important if you are running on any scale, to keep running throughout the year. If you don't run continuously you have to collect and train a new body of men each time you start and stop. Moreover, in most of the mountain regions, labor is much more difficult to get and to hold in the summer than in the winter—I beg your pardon—exactly the opposite—in the winter than in the summer. The winter men appreciate a job more and try to hold it and work more steadily. In the summer time they want to get up and move around. A great many of the miners want to prospect on their own account in the summer months. That has always been true in the high mountain camps of Colorado. I said it was easier to hold men in the summer than in the winter. I mean exactly opposite—the winter as compared with the summer.

I am not sure what was the most active year we have had up there since my connection with the company. I should think the tonnage was about even in 1914, 1915, and 1916. We commenced running the mill in the spring of 1913, and I think the tonnage was about even from then, excepting for the first six months of the mill, we didn't get the tonnage up as high as we did after that; we increased the tonnage. From the time we started the mill to the end of 1916 were our best years.

We depend entirely on coal for power. There is no electric line up there. There is water which might be developed for power nearby. That would require some additional expenditure of capital; not prohibitive. Buena Vista or Salida I should think is our closest electric line connection, and they haven't very much power to spare at Salida. But there is another side to that, and that is that if one were to use the electric power, you would reduce the amount of coal, of course, and that would reduce your freight for the railroad. Now, at one time, there was a small power plant on Chalk Creek below us. It was put up to operate a dredge over the divide at Tincup. That dredge did not pay, and the power plant was on the market. I was, on behalf of the Mary Murphy company, considering the purchase of that power plant, and I received a call from a gentleman who conveyed to me a hint if we purchased that power plant there would be trouble about the railroad continuing, so we did not purchase their power plant. Outside of the mining industry in this vicinity, I am very dubious about there being any immediate necessity for a railroad there. Of course, the other possible traffic for a railroad would be stone or timber, and personally, I don't know enough to [fol. 180] say, but I am dubious about it.

By Mr. Whatley:

In January, 1922, seven cars went out from our mine, and I don't know whether there — others. There were probably others that are not entered in that book. When I stated, in reply to the question by the Examiner, that I was doubtful whether the road would justify operation apart from the mining business, I referred to the Buena Vista-Romley branch by itself. That answer would not apply to

the entire line from Denver to the Gunnison coalfields. I have not specifically studied that line, but my belief is that under the conditions which now apply, on the basis of the outlet for the ores of the Eastern Slope, and the greater profit in the coal transportation business, that the line as originally built, if economically operated, would be profitable. At the time I first became connected with the Mary Murphy, which was the fall of 1910, the company had met with very little success and had arranged to make a change in the management, and I was offered the job. I did not give any definite reply, but asked for a month or two of time, in which I could familiarize myself with the business and see if there was a prospect of making it successful. Within, I think, a week of that time, it was stated in the papers that the Colorado & Southern was going to abandon its South Park Road. I went to see Mr. A. D. Parker, who was the Vice-President of the road in charge of operations, and asked him whether that was the intention, and he said yes. "Well," I said, "The Mary Murphy people have offered me the job of running that mine, and if I take the job, it will be on the condition that they put up a sufficient fund for me to develop it, and if justified, to equip it." Well, he seemed a little concerned about that, and after some conversation he said, "Well, I will tell you what we will do: We are good sports; so long as you will run that mine, we will run that road." That was one of the reasons why I took the management of the Mary Murphy and induced the stockholders to subscribe for a bond issue which was afterwards floated among the stockholders, and but for that I don't think I should have recommended that bond issue or the building of the mill which was built out of the proceeds of that bond issue.

By Mr. Dier:

This conversation with Mr. Parker was early in the fall of 1910. In Mr. Parker's office in Denver. I think it was then in the Cooper Building. It was not in the same quarters it is now. I think I had seen in the papers about the abandonment of the through line. I have seen Mr. Parker on many occasions. I don't recollect whether all the conversation took place at one interview or two. It was either one or two. His statement was not reduced to writing or put in the form of contract. It was not a casual statement. The mill had not been built at that time. There was no question between Mr. Parker and myself at that time of building the mill. I hadn't even made designs for the mill. And after that conversation, my report to the company was to the effect that there was no justification at that time for building a mill; that, prior to the consideration of the mill, it would be necessary to develop enough ore. That was done. After the ore was developed, I made very extensive tests on the ore, and subsequent to the making of those tests the mill was designed and built. Moreover, I will tell you one thing more: When I made those tests and designed that mill, I reported to the company, in my opinion, the method I proposed to adopt in the mill would be good practice under the conditions then existing, and I said that I thought it would [fol. 181] be good practice for about five years, but that I was con-

fident that it would not represent the permanent development of the metallurgy of that ore. My understanding was that that was an agreement between Mr. Parker and myself, Mr. Parker representing the railroad—a gentleman's agreement—that so long—and particularly he put it in a personal way—so long as I would put my work, and my labor, and my endeavors to make a success of that thing, that the railroad would back it up by running. Our company has been in arrears of the interest on its bond issues since probably 1918, and owes that bond interest and some money beside. Whether or not that constitutes insolvency, of course, is a question of fact. I think your railroad owes some money too. I personally arranged for the appointment of a creditor's committee. The ratio between the crude and the concentrates on the Mary Murphy is about five into one to seven into one.

S. L. TABER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is S. L. Taber; residence, St. Elmo, Colorado; manager for the Flora Belle Mining and Milling Company at St. Elmo. I am clerk and recorder of the Town of St. Elmo. I have lived in the Town of St. Elmo seventeen years. That is an incorporated town. I have been engaged in the mining business in that section about 25 years. I have been connected with the Flora Bell Mining Company since 1906. The property of the Flora Belle Mining Company is located at approximately a mile and a half West of Romley on the C. & S. Railroad. It is known as a silver-lead mine, containing some zinc and some gold. We have a complex ore such as is generally found in that district. We organized the company in 1906, and since then we have operated off and on during that time. We have produced some ore. The ore that we have shipped and produced has been ore that has been mined as we have been developing the mine, that is, in driving tunnels and laterals and up-raises, we have taken out a certain amount of ore, and that ore has been shipped, but up to the present time we have been mostly engaged in developing the property. We are driving and doing this development work for known lodes or leads of ore; we have surface indications, and we are driving—at least, that has been a part of our development work. We were forced to drive a tunnel 1,500 feet long from the C. & S. Railroad before we reached our property. That was so that the ore could be handled at a minimum cost. That has been driven, and an up-raise of 500 feet has been driven. The tunnel is in 1,500 feet from the mouth. At that point we up-raised and cross-cut up through our property. We have done about 3,000 feet of development work, and that has all been done in order to get in position to ship ore. We feel that we are just about ready to ship ore, and the fact is that we have been ready, and were ready about four

years ago, but we found out that there was a large quantity of our ore that was milling ore, and so we associated ourselves together in another company and built a mill at St. Elmo—a hundred ton mill at St. Elmo. That mill was finished, or pretty nearly finished, about a year ago. Since that time we have been doing nothing at the mine or nothing at the mill. The conditions were such that it seemed impossible to operate at a profit. By the term "conditions" [fol. 182] I mean the price that we could get and the cost of getting it out and getting it delivered, and treated and smelted, and the return we would get. Those factors entered in to the decision that it would not be profitable to operate under present conditions; also labor conditions entered into it.

I have heard the testimony of Mr. Collins with respect to the prospects of mining conditions righting themselves in the not far distant future. We feel the same as Mr. Collins. I think Mr. Collins is in the position to get more direct information along these lines than we are, and that is our opinion. Assuming that that shall prove to be true, our property will be ready to begin shipping and milling on a fairly extensive scale for a small property. We have an investment in the mine of approximately $92,000.00. We had spent in development $91,936.58 up to the end of last year; that is separate from the mill; the mill cost close to $50,000. The lumber, machinery, etc for the mill was hauled in by the Colorado & Southern Railway Company and it is now practically finished, if a mill ever can be finished. It is a question whether a mill is ever completed. There are other mining properties in this section of the state served by this line of railroad; quite a number of them. There is no other business developed in that section of the state to any extent, except the mining business. There is some cattle-raising down at Mt. Princeton—down in that section, those cattle are ranged back in the hills in the vicinity of St. Elmo. Sheep are ranged all through the entire district.

We have a wagon road from Buena Vista to Romley that is passable during the summer months, but since the railroad carried the mail, they took off the stage line which operated all winter, and since that time the road during the winter months is impassable. The stage line operated up from Buena Vista as far as St. Elmo, which was the main stage, and from the point of St. Elmo to Romley the contract was re-let and the mail was taken up by horseback—if the roads were bad, he went on horseback. The stage itself did not operate beyond St. Elmo.

Tincup and Taylor Park are contiguous mining camps or sections served by this line of railroad. St. Elmo is their shipping point, both in and out. The mail is delivered at the present time solely by railroad. We have no other way of getting the mail in there that we know of. We have no doctors and have no hospitals. We rely entirely on Buena Vista for doctors and Salida for a hospital. Without a railroad it would be very difficult to get out during the winter months especially for sick people. To give you an idea, one of our neighbor's children was taken sick, I think a year ago last winter. He was obliged to get a doctor from Salida, and it took some two

days, and cost the man $125; he was obliged to go as far as Nathrop to meet this doctor; they took him up on the front bobs of a sled; which consumed the greater part of the day; he was obliged to stay all night, and it was the same on the return trip the next day. That happened during the days that the railroad does not run, say, from Wednesday until Saturday. This line of railroad formerly operated a daily passenger and freight service over the line. I have known this line of railroad since 1904. I knew it when it was operated from Como to Gunnison and Baldwin. They hauled more coal then than any other commodity that I know of. They appeared to have a pretty active coal business. In my judgment, there were trains going continually, or several daily each way—coal trains and stock trains—and seemed to an outsider to be doing a prosperous business. That was when they were operating all the way through. Since they ceased operating the line West of Hancock and East of Buena Vista or McCune, the only business is simply the business of the [fol. 183] mining interest, and whatever develops in that little 29 miles of railroad.

There is a postoffice at St. Elmo and at Romley. The passenger service during the days before a portion of the two ends of the line was abandoned was very much the same as now except we also had daily service; we also had a station agent, and the station was kept up, of course, and our freight shipments were handled to better advantage both in and out, and as I say, we had daily service, and now we have combination service. We have always had combination service in the district but formerly it was daily.

We purchase supplies for operation of the mine—any supplies that we are able to get are usually bought at Buena Vista. That is our nearest market. Of course, such as machinery and heavier supplies, we usually get them at Leadville, or Pueblo, or Denver, wherever seems to be the best place. They are hauled to Buena Vista by the Rio Grande and then over the C. & S. The abandonment of this service on this line and the tearing up of these tracks would be a very grave detriment to the district. We have talked it over and have given a great deal of thought to it since this question came up, and it seems that we would simply have to abandon these properties—we can see no way of operating at a profit. We would lose our entire investment is the way we look at it at present. I think there are people residing outside of this immediate vicinity at the present time that own properties in that section. As far as I know they would be affected in the same way. People own their homes in the Town of St. Elmo. They would be affected in the same way. There would be no business there, and of course it would be impossible for them to stay there. Never in the 17 years I have been there have I seen the population as low as it is at the present time. The population is gradually dwindling down. In 1920 I cannot remember just what it was but it was substantially the same as it is now. I don't know what it was between 1910 and 1920 when the mines were operating. I remember sitting on the election board one time when we had close to 200 voters. That was probably 5 or 6 years ago, something like that. It was while the mines were operating. I have

no reason to doubt that the same conditions would probably return if the mines were started.

Prior to the making of this application to abandon this service and tear up these tracks, no official or other representative of the C. & S. ever conferred with us as to the prospect as to what we were going to be able to do from these mines. If they had conferred, I would have told them substantially what I have said here this morning.

Cross-examination.

By Mr. Dier:

This development work amounts to about 3,000 feet and it was completed two years ago—a year ago—in 1920 we completed or did about 500 feet of that work. This 1,500 feet of tunnel has been completed about 5 or 6 years and the 500 feet up-raise from the tunnel was completed approximately at that time, so that the tunnel and up-raise have been completed for 4 or 5 years. We shipped ore that was taken out while this development work was being done. [fol. 184] It developed that we found in connection with our smelting ore that there was a great deal of milling ore, in fact, the ore would have to be milled before we could make a profit in operating. For the last 4 or 5 years we have been engaged in getting this mill built and developing our property. The mill is fully equipped for operation now with the exception of possibly one or two improvements that have been determined on since operating the mill in a small way. This Flora Belle Mine is an old discovery. There wasn't a great deal of work done on it until our company took hold of it, in 1906. It has not shipped any considerable amount of ore. I think probably $3,000 would be the entire receipts of ore shipped for the entire period from 1906 to date. You understand that was the ore that accumulated as we were driving drifts and up-raises—not working, you understand, for the shipping or the getting out, or the producing of ore—it was the ventilating and draining of the mine and getting it in shape to operate at a minimum cost. I think this railroad company is under a duty to maintain operations, and based upon that prospective business, to keep on operating its railroad. I think in 1916 we shipped two cars having an approximate weight of 50 ton. I don't know how many we shipped in 1917; I am not sure; I haven't the data here. In 1918 we shipped perhaps six cars having a total weight of 145 ton. In 1919 we possibly shipped a total of 5 cars with a weight of 125 tons. Since that time we have not shipped a single pound of ore over the railroad. I think it is pretty close to the truth to say that during the last five year period,—that is, from 1916 to date—we have shipped a total of 14 cars.

The present population of St. Elmo does not exceed that given in the 1920 census, in other words it does not exceed 35. It has not exceeded that number during 1920 or 1921. Unlike Mr. Collins, I do not ride horseback along the track during the winter time. I live in St. Elmo. Mr. Collins does not, and he is forced to travel

from Buena Vista to St. Elmo, while I live in St. Elmo. When I have occasion to go back and forth in the summer time, between St. Elmo and Buena Vista, I use the automobile a part of the time. There used to be a stage line operating to Tincup; that stage line quit operating I should think about four years ago, that is, approximately—maybe five; I am not certain. The sheep I mentioned are driven in there for summer grazing, sometimes from the Las Animas country, and that country down there. There are, however, sheep raised at Nathrop. I have never seen any sheep loaded on the C. & S. along that branch. I don't know much about the sheep business. I don't know whether it is cheaper to drive down or to load and ship—I don't know anything about it. I have seen cattle shipped along this branch passing through there, from the Gunnison country. Since this branch has been operated by itself, I have never seen any cattle shipped on the railroad. I have no data as to whether it would be cheaper to drive them to Nathrop and load them on the Rio Grande, so I know nothing about it. I am not a stock-man at all. I know that practically the entire territory along this branch is within the Forest Reserve. I understand that they get concessions or the timber is sold by the Forest people for cutting purposes. That is not down timber. The last sawmill in that territory was the one that sawed for the Mary Murphy mill. We had to ship our timber in.

[fol. 185] By Exam. Gault:

There is only one general store and a post office at St. Elmo at the present time. There is a mine company commissary at Romley. No motor trucks have been operating along the highway. We now and then get a small truck up there that is owned by individuals—a small truck, but there never has been any truck operations up there. I think it rather impossible to operate a truck with any tonnage, on account of the grades, curves and the condition of the road, and the general condition of the country. I should say that it would be almost impossible to haul any tonnage with the present road there. That is heavy trucking. I have been over the road a great deal in an automobile, and know nearly every foot of it, and I know that it is not even a good automobile proposition. Ordinarily up to date it is passable by automobiles. I made the last trip this year about the 13th of December, and I made the first trip this year on the 15th day of last May—was the first day that I could get out with an automobile.

By Mr. Whatley:

The 13th day of December is an exceptionally late day for getting out. Usually we are not able to get out quite so late; it all depends on the condition of the road, or the storms. A year ago, on the 5th day of November, we started down with the ballot boxes and we took four men, and we were all day getting to Buena Vista with two autos, and that was going down you understand—it would have been impossible to get up. The snows are very heavy in this country.

By Mr. Dier:

The present vehicle road is down along the bottom of the canon following the creek and there is where we encounter our snow trouble. The railroad grade is up on the mountain side and it doesn't get the same amount of snow. It runs on a more uniform grade and does not encounter sudden dips or curves. If the railroad grade was used for trucks we would not encounter the snow difficulties and the sharp dips and curve difficulties that we meet down on the lower road.

By Mr. Whatley:

I really don't know whether we would have to reconstruct the railroad bridges. You would have to reconstruct all the rest of the bridges for motor truck on the road, and the railroad bridges would, of course, have to be all covered and one thing and another, but as to their construction, I don't know. If the bridges were taken away, of course we would have to reconstruct them.

GEORGE A. STAHL was thereupon called as a witness and having been duly sworn, testified as follows:

[fol. 186] Direct examination.

By Mr. Whatley:

My name is George A. Stahl; I reside in Denver; I am engaged in mining. I was elected president of the Colorado Metal Mining Association at the last annual meeting a few weeks ago. That association is an amalgamation of the various county or district organizations throughout the State, and is organized for the purpose of promoting the metal mining industry in general. I think I am familiar in a general way, with mining conditions as they prevail in Colorado at the present time. The whole metal mining industry has been very hard hit in the last few years on account of the conditions resulting, perhaps, from the aftermath of the war, but efforts are in progress, I think, without exception, in every one of the old districts to do development work in the hope of rehabilitating the industry. I think possibly I was elected President of the Association because I am an optimist. I think that we are not going to be happy and prosperous this year, but I do believe that we are going to make a step forward, where concerted effort is being made all over the State and some development work in each district, at least, a portion of it, is going to result successfully and open new ore bodies. Nearly all our mines were, under the stress of conditions, compelled to gut their ore resources in the last three or four years, and from lack of sufficient labor and the high cost of supplies, development work was very largely curtailed, and suspended entirely in some instances. In the particular property of which I am General Manager, we are now doing development work which we would have done three years ago had we had the opportunity—had the conditions been such that we

could. I feel that there is beginning to be a change in the conditions, and that the worst is at least with us, or behind us, and we feel justified in going ahead with development work and getting ready for the time when we will be able to market our product. I think the condition which I describe applies pretty generally to the mining industry of Colorado.

I am familiar only in a casual way with the mining districts or territory in the vicinity of St. Elmo and Romley, Colorado, and the Tincup district, served by the Buena Vista-Romley line of the Colorado & Southern Railway Company; not in intimate detail, due to the fact that none of the operations of the companies with which I am connected have been in that vicinity, but in a general way I know of conditions existing there. I think there is an opportunity for revival in that section.

Cross-examination.

By Mr. Dier:

I think the testimony which I have given might be characterized as the language of hope. I did not intend that it should be particularly definite so far as that particular district was concerned, because I stated that I was not familiar with that section, in detail, but so far as hope is concerned, I don't think there is any excuse for any continuation of human effort in any line of industry without hope. If I had no hope, I would not care to be in any line of business, and we haven't any business to be in mining if we are not hopeful. The miner has got to be an optimist, so has a railroad man, or your situation would be intolerable.

I have been in Colorado since 1882. It has not necessarily been [fol. 187] the history of this State, that whenever a mining camp was discovered, the railroad soon went to the mining camp if there was the tonnage there to haul. Whenever a Cripple Creek or a Creede is discovered, a railroad soon follows, but not always. For instance, when Creede was discovered, it was naturally contiguous to the Rio Grande. The Rio Grande would not build in there. Mr. Moffat was president of the Rio Grande and built the branch line himself. It paid enormously, and the Rio Grande afterwards bought it from him. The railroads do not always hurry in there. My first residence in Colorado was in Tincup as a small boy. I went there in 1882. Tincup has never made a large camp, although there were several properties that produced quite extensively. I have not been in there since I left there in 1884, but I have always had an idea in the back of my head that if the railroad—this branch up Chalk Creek—had swung over the ridge—over the main divide by way of Tincup and down that valley, by Taylor into the Gunnison, that Tincup would have been a real camp, but that it was prevented from doing so because it has always been off the beat and across the main divide, making operations, except in very high grade ore, prohibitive.

G. C. FELTON was thereupon called as a witness and, having been duly sworn, testified as follows:

By Mr. Whatley:

My name is G. C. Felton; residence, Denver, Colorado; business, mining. I am engaged in mining in Chaffee County, near Hancock, on the Buena Vista-Romley line of the Colorado & Southern Railway Company. Formerly I lived in that section of the State, commencing in 1880. I helped build the C. & S. Railroad there across the range. I made Hancock and St. Elmo my home until October, 1889, when I moved down to Buena Vista. I have called Denver my home since 1892. I am still interested in that section of the State. I have property and interests there that I located back in the eighties, and patented it since from the Government, and I have been trying to develop it all these years. I am Vice-President of the Colorado Silver Mines Company; Manager of it the last six years. Its mine is located on Pomeroy Mountain, lying from Chalk Creek up the mountain side, one half mile down from Hancock. Our group of claims is one-half mile below Hancock. On this group of claims that we have now—eight mining claims in one group—we have expended in equipment, mining equipment and development work—over $80,000. We have considerable ore in sight blocked out. We have 4,000 feet of development work on these veins. We have a system of 10 veins running from Pomeroy Mountain northeast and southwest there from the Continental Divide and three-quarters of a mile in our territory. We operate this through a cross-cut tunnel to the extent of 700 feet now. There are drifts 800 feet from the surface of the Alla Bell vein. There is a 900 foot vein along the Alla Bell vein from the cross-cut and the two levels are connected with a 100 foot raise. We have lead, zinc, copper. The by-products are gold, silver and quartz. We have not operated development work during the last year and a half, owing to the financial stringency. We had our mines all working all the winter of 1919, into 1920, carrying on the development work, and we exhausted our funds, and the panic struck us, we did have the surplus, and owing to the increased costs, freight charges and smelting charges, we could not possibly do any shipping of ore or proceed with the development work.

[fol. 188] I have been present during this hearing and have heard the testimony of Mr. Collins and Mr. Stahl and Mr. Taber with regard to the outlook of the mining industry. I agree with their conclusions and estimates of the situation; I think it has been very clearly stated. In the event the mining industry, in fact, gets on a more solid basis we will be in position to ship. We have every intention and preparation—have been trying to prepare for it, hoping for more favorable conditions under railroad and smelting charges, so that we might have some profit. We have engineers' statements that we have a good many thousand tons of ore blocked out between our two levels, and at the surface back four (hundred) feet from the lower level. We will lay the ore right on the railroad at the spur on our ground, and it is billed from Buena Vista. Our spur is near Hancock; it is right on the Alla Bell. The Alla Bell is one

of the claims owned by the Colorado Silver Miles Company. I have known this line of railroad, pretty generally, since it was completed; I have been over there every year doing my assessment work. I was up there at the time the railroad company ceased operating the line west of Hancock. I think it was the same winter or the next spring that they ceased to operate east of McCune to Garos. Prior to the time they ceased these operations they always seemed to be quite busy, and we had pretty regular trains and always had regular trains and car loads of cattle—train loads of cattle—for the last two years especially, it seemed to develop into quite a traffic with the cattle business in the Montrose country and the coal business had been very heavy, operating since the railroad was completed in 1881—it ran many coal trains. Since they ceased to operate the two ends of the line, we have not had any such a thing as daily service. About three times a week is all they will run, and we have a combination coach,—a passenger and freight mixed train, and that has been to handle local business between Buena Vista and these stations. Since the present depression in the mining industry came on, in the last few years, the population in that section of the state has gone down; kind of a general decrease in the products, and detraction generally, owing to the general conditions. There has not been much employment of labor and the result is they have moved away to other places. I think mining has been the mainstay of our whole gulch and supported most of the people of our Gulch from Alpine up. We get our mining supplies mostly from Denver, but for our boarding house, from Buena Vista. Buena Vista is our closest market. I think the effect on these mines and mining properties and enterprises up there, if this line of railroad serving them should be discontinued—the service should be abandoned, and the tracks torn up, would be the abandonment of the whole district, so far as mining operations are concerned. I don't think it would be possible to haul ore out of there by truck.

Cross-examination.

By Mr. Dier:

I haven't had any experience in handling ore by truck. We have shipped from the property owned by the Silver Mines Company about 15 loads of ore taken out of the development work. Those shipments were made back in 1880, just a few taken out of the development work, that we prospectors were able to take out by handwork. We shipped in 1890 and 1919. We shipped by railroad in June, 1919, under the name of The Colorado Independent Mining and Development Company. We shipped three cars in the spring of 1919. We shipped 2 cars in 1918. Here is a copy of the smelter returns. They paid us for it. I am Vice President of the Colorado [fol. 189] Independent Mining and Development Company, and one of the Directors, and the General Manager of it, since incorporation. The Colorado Silver Miles Company was simply a transfer of the name in April, I think it was, 1920; a change of name and increased capitalization. We shipped several carloads to the St. Elmo

mill, I think it was 1916 or 1917, we shipped a few carloads down to the mill at St. Elmo. It was the Pawnee mill, I believe it was called then. It was a mill that was under construction that Mr. Taber now controls. We shipped five carloads to this mill in the year 1916, I think. It was not earlier than that. Our total carload shipments which have gone to Buena Vista from 1916 to date is about 11 cars. We had shipped some before.

By Exam. Gault:

This is what we call a complex ore, sulphide ore—lead, zinc, copper and sulphide, carrying some manganese and some iron. It is exactly the same character as the Mary Murphy mine. It is an extension of the same vein and the same formation, except we are lower on the mountain and have less oxidation because of the fact that their mine is nearly a thousand feet higher, and the oxidation extends some 400 feet deep, while at the upper end of the Flora Bell Claim, where the original discovery was, the oxidation only extends 20 feet deep, and from there down the mountain there is no oxidation. Our properties have never been on a commercial basis; simply a development state. This line of railroad is the only line we have to get ores down to the Arkansas Valley or to the Leadville Smelter—to get it to the railroad at Buena Vista. We would have to depend on this line entirely. The ore runs 7% zinc, what we term our shipping grade, that we send to the smelter. The mill runs from 3 to 4%.

T. S. Shuttleworth was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is T. S. Shuttleworth; residence, Buena Vista; mining engineer. At the present time I am engaged at mining about a mile, possibly less, from Hancock—between Romley and Hancock—on the Buena Vista-Hancock branch of the C. & S. Railroad. I am Manager of the Rarus Warrior Mine which is carrying on operations there. We are practically new operators up in the district. We did not commence actual work—that is, work with power machines—until last July, and since that time I have been engaged in driving a lower level tunnel to develop a body of ore exposed in an old working up above—that is July, 1921. The work on the tunnel is all the work we have done except buildings, and timbering the old workings, and amounts to a little over 500 feet—that is new work and we had to clean up, repair and retimber about 100 feet of the old workings to make them safe for sampling and other investigations. During the time we have been there we have made an investment in this property of approximately $14,000 to date, but, of course, our plans include the expenditure of considerable more in the capital expended in the coming year, besides an increase in the number of men employed there. I have opened up within this past—I think to be safe

I will say six weeks—a very promising body of high grade ore. As [fol. 190] I understand—I am not very familiar with the Mary Murphy here, for instance, except by description—it seems to be rather of a different character both as regards ore bodies and the values in the ore, from anything I know in the district. It might be classed, I think, as a silver-lead ore, with a little gold. The zinc values generally are negligable, and my high grade ore, which runs from $150 to $300 per ton, is siliceous sulphide or sulphur ore. The $150 is sulphur—that also carries about $10 in gold, and practically no lead or zinc. I have not been in position to ship any ore to the present time. I could ship at the present time, but, of course, weather conditions will not permit. We have been shipping in certain supplies. I am planning and working along the lines this winter, and I firmly believe that after the first of May next, I shall be in a position to ship probably one car of ore per day—25 tons per day of smelting ore. This present level is blocked out, and taking into consideration the old workings up above, the work that I am doing will develop, as far as I can judge, between the two levels, to about 6,000 tons of shipping ore. That are shoot in the entry of the vein, I expect to go down to a further depth of 6 to 900 feet below the present working; but the work I am doing at the present time I calculate from all indications will develop to about 6,600 ton- of shipping ore. That does not include any other ore shoot which may be developed in the property, and from strong indications, I might say, to a practical certainty, that an ore shoot will lead probably to many more. We will be able to ship about the first of May, but not in the meantime, because of the weather conditions and the snow, which is fairly heavy in that country, and although the railroad has been in a position to give me service regarding the getting in of coal and supplies until approximately the middle of January—it might be a little later than that—snow conditions since then will prevent from now until the first of May, and will make it absolutely impossible to get the train in. These estimates that I have given of ore returns are based as far as estimates of that sort can be based, on the measurements and samples taken in the lower levels up above and the measurements and samples taken of the ore body below since we encountered it. That ore shoot might be of considerably greater extent than my estimates seem to point. The upper level, when I stopped driving—I left in the breast very rich ore, but the position of that tunnel was not convenient for economical shipment, so I left that work with ore in the breast and came down and drove this lower tunnel, which is just of sufficient elevation above the railroad to enable me to load our cars directly from the mine. The extent of that ore shoot is practically up to a production of 6,000 tons, and might be doubled, trebled ,or it might not be any greater. I am sure it will not be nay less. When we are in operation that ore will be shipped out by the C. & S. We will employ men to run the mine. To do that work, exclusive of any of what is called capital expenditure—that is, putting in an ore compressor plant and constructing buildings, and so on—exclusive of that, I shall require from 16 to 20 men in the mine just to do that work. I expect to expend prob-

ably $20,000 in plant buildings and equipment. I am not familiar with that district to the extent that the other witnesses are. I have known that district only since last March—not quite 12 months—but of course I have been considerably around the district since that time. It is exactly the opposite to a worked out district, if development operations could be pushed. If money was available for extensive development operations, I would consider it is the opposite. If there were no means of economical transportation and this line of railroad was abandoned and the tracks removed, that would create a hardship on our operations and shipment. There is no other means at the present time; it is the only railroad serving that section.

[fol. 191] Cross-examination.

By Mr. Dier:

I have been making some investigation into the trucking proposition. My mind is open. I would like to say in answer to your question that I have had given to me figures—I won't call it on a trucking proposition, because it was a tractor and trailor proposition, which is rather different. Now, these figures were compiled by the manufacturer of that tractor, and of course I have no actual knowledge of their correctness. The figures as given to me are subject to two conditions that appeared to point to this fact; that if these two conditions are available, that the business to a certain extent in that district might be handled at a reasonable cost by that system of transportation. The concentrating mill we have had in mind would not apply to my shipping ore. In excess of this probably 6,000 tons I have mentioned, developments point to the fact that we shall probably have a considerable body of milling ore which would average probably $12 to $15 per ton, and which would not, under any reasonable conditions even, pay to ship as crude ore; and if the future development work shows that we have that tonnage of milling ore, we shall then plan to put in a mill which will handle that grade of ore, but will not reduce the amount of smelting ore which will be shipped as crude ore. I couln't tell you how many tons of crude ore go in to make up a ton of concentrates, because that all depends absolutely on the value or the conditions of the crude ore. For instance, you might get an ore which is, we will say, very heavy, or heavily impregnated with an iron sulphide and you could not separate the iron sulphide from other values in the ore. In that case it might mean that you could not concentrate more than 2 or 3 tons of crude ore into one ton of concentrates. On the other hand, I had an experience with an entirely different grade of ore, and we could put 200 tons of crude ore into one ton of concentrates. It is a question that no man can answer with any definite statement. I would not like to make a definite statement as to whether or not the taking up of this road will have the effect of closing down our operations. I should say no, not immediately, for the simple reason that the ore that I might develop is of such a high value that I could probably devise some other means of getting it out, but it would seriously reduce our profits in the operation.

Redirect examination.

By Mr. Whatley:

It is a fact that by concentrating these low grade ores we will give to the railroad company a tonnage which it would not otherwise have. That applies not only to the fact that you will concentrate ore which would otherwise have remained in the ground, but you will also bring in fuel and supplies for reducing it.

By Exam. Gault:

The two important conditions with reference to hauling this material by tractor were: One was that the present right of way of the C. & S. Railroad should be surfaced and put into shape to operate the tractor and trailor train over the same grade that the train runs on at the present time; and the other was based on an estimated tonnage running from 30 to 50 tons per day being available for [fol. 192] transit. I think it would be absolutely impracticable to operate a tractor hauling any quantity of ore over the present highway. I think the same would apply to hauling passengers all the year round. During the summer passengers could be carried up by light automobile, but during the winter it would be absolutely impossible to use that means of conveyance over the present county road.

Thereupon the protestants rested.

HARRY P. WILSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Dier:

My name is Harry P. Wilson. I am in the wholesale and retail machinery business. My residence is Denver. I have been engaged directly in this line of business for the last 5 years. I have specialized in the tractor business—not the trucks. I have seen the profile of the Buena Vista—Romley branch of the C. & S. and have had explained to me the operating conditions up there. I could gather from the profile the curves and grades, and so on. I understand that feature. I have made some study with reference to the feasibility of operating a tractor line for the hauling of the coal up to these mines situated near the upper end of this line of railroad and the hauling of the ore and concentrates down.

By Mr. Whatley:

I have not gone over this line up there at all. I have not been up on the line. I know the conditions only as they have been presented to me by someone else.

By Mr. Dier:

This tractor business—that is the feasibility of tractor proposition—has been one of my specialties. We have put out a great many of these tractors on similar work to this, and in basing my opinion of this particular job, I am making a comparison of one in the vicinity there. That is a tractor that was operated by the Buffalo Sulphur Refining Company from Creede to a mine of theirs 20 miles from there over conditions which I believe to be much harder than the conditions as represented to me on this particular line. I have not been over this Creede line that I speak of. That tractor line has been in successful operation. We sell the Holt Caterpillar Tractor. That is a successful tractor. It is the same tractor that was used in the Army. The tractor that we are figuring on is the 10 ton size. There are several sizes; We have the 2 ton, the 5 ton, the 7 ton, and the 10 ton for commercial purposes. They operated this Creede line all last year. I don't know that they operated every day. No, but they have operated up there for approximately a year, from Creede southwest to their mine, a distance of 20 miles—a good 40 mile round-trip haul. The ore is brought into Creede from the [fol. 193] mine and loaded on the railroad cars. From the information furnished, we make the following estimate on the cost of hauling ore from Romley to Nathrop with Caterpillar Tractor and Trailors. I have here two estimates. The first based on a load of 30 tons, and the following equipment would be necessary: A 10 ton Holt Caterpillar Tractor and 3 ten ton trailors, at an equipment cost of $9,750.00. Cost of operation based on working 250 days in the year with the above outfit per round trip of 40 miles, which could be made in approximately 14 hours, would be as follows: Driver, $10.00; Helper, $7.00; 45 gallons of gasoline @ 25 cents, $11.25; Oil and grease, $2.50; Interest, $2.40; Repairs and depreciation, $8.00, making a total of $41.15, which shows a total cost of $1.37, per ton, without taking into consideration any tonnage whatever on the back haul. Figuring that there would be supplies, etc. of sufficient volume to make 8 ton on the return trip, would make the cost per ton for the round trip $1.083 per ton. From the description of the road to be hauled over, and inasmuch as the haul is all down hill, running from 1 to 4%, we are of the opinion, that you could probably haul more than 30 tons. We cannot, however, state exactly how much can be hauled without knowing first-hand all conditions. In the event that conditions are, as we believe them to be, we are of the opinion that it would be possible to handle a 40 ton load on this down grade with an additional cost of another trailor of $1,200, and one man. This is based on the railroad grade. On that basis you have the following operating costs: $10.00 for the driver; 2 helpers, $7.00 each, which would be $14.00; 45 gallons of gas, $11.25; oil and grease, $2.50; interest, $2.64; repaired and depreciation $8.80, making a total of $49.19. That would be for one round trip. And this would equal $1.23 per ton in the event that the return trip was made without any load, there would be no difficulty in handling 8 tons of supplies, and just as a matter of com-

parison, putting in the same tonnage going back on each estimate, would make $1.02½ per ton.

Cross-examination.

By Mr. Whatley:

I have been talking to Mr. Shuttleworth about this proposition. These are not the figures that I gave him. I formerly talked with Mr. Shuttleworth, and the figures made at that time were a little bit more than these. I did not take into account anything for putting this railroad grade into proper shape for the use of the tractor; I have not figures on that; I have figured on the supposition that we could haul 14 hours a day, and I have not figured on as much tonnage up as I have down. I have not been over this road at all. I have only taken into consideration operating a small portion of the time in snow. In other words, my figures are based substantially on what is called the summer months of the year—general working months. Mr. Shuttleworth spoke about the snow over there in the mountains; he told me how much it drifts in places and how much deeper it is in other places. I did not take into account any shoveling in keeping this snow out of the way. It is possible that might be necessary, but I don't think it would. I don't think it would be necessary to handle it with a shovel if you put a plow on the front of the tractor, or some other implement to remove the snow, all of which would increase my figures.

[fol. 194] The tonnage hauled on the Creede proposition, as submitted to me by Mr. Little—here is a brief outline of the case as submitted by the Buffalo Sulphur Refining Company: The average haul was a good 40 miles over a very poor road, in the main, down hill, but they had stretches of up hill over as high as an 8% grade. The equipment used was generally a ten ton Caterpillar and 5 or 6 trailers, carrying an average load of 25 to 30 tons. At times, however, they had as many as 7 trailors, hauling a load of 35 tons. The average time for this trip was 8 hours down loaded and 6 hours for the return trip with a limited tonnage of supplies. The altitude at which they were doing this work was 8,700 feet at Creede and 10,500 feet at the mine. In addition to their regular hauling work, they used this Caterpillar to pull a grader which built stretches of road, and hauling materials for bridges which were constructed. Now, the only cost that Mr. Little was able to give me was a total cost of $2.60 per ton for this hauling, but which included not only the maintenance of this 40 miles of road, but the building of 8 miles of new road and 14 new timber bridges in addition to small jobs too numerous to mention.

By Mr. Dier:

Creede is very close to the Continental Divide; pretty high; located about like Buena Vista. I looked up the elevation, and the elevations I think on this Nathrop-Romley haul are very similar. The high

point is Romley, at an elevation of a little less than 11,000 feet. The Creede mine is 10,500, a couple of hundred feet lower than at Romley I should say.

By Mr. Whatley:

In making up these figures, I have taken in depreciation and replacement. I figured five years for both the tractor and the trailors. They would be completely worn out in that time. I figured the repairs and depreciation at 20% per year. That is, 20% of the total cost. I did not figure gasoline at Buena Vista; I figured prices above Denver prices. I figured wholesale prices on the railroad there. Gasoline is 23¢ here, and I put this in at 25¢. The retail price in Denver, I believe, is 23¢. I do not know how much snow the Creede proposition has to contend with.

J. E. BUCKINGHAM was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Dier:

My name is J. E. Buckingham; Assistant General Freight and Passenger agent, Colorado & Southern Railroad; residence, Denver. Past and present rates on ore from the various shipping points on the Romley branch to Leadville are as follows: June 25, 1918, on ore up to value $20, the rate was $1.50. Under general order 28, the rate advanced to $1.90. Under exparte 74 it went up to $2.40. Afterwards, at the representations of the mining interests, that they could not stand and operate at $2.40, the rate under the exparte 74 increase was taken off, and the rate at present is $1.90. That is on [fol. 195] the low grade ore. I thought we might make the record clear on the rates.

Cross-examination.

By Mr. Whatley:

When these representations were made by the mining interests, we did not drop back to $1.50 for a short time on this branch, as I understand it. This record was given to me by our Tariff Department. It may be wrong, but the intention was to take off exparte 74, and that was done. There might have been a short period when they had $1.50, but the record doesn't show it. The rates all go back to the General Order advance. If you want the figures, I can give them to you. On a $35 value it is fifteen and a half cents; valuation of $100, twenty-seven and a half cents; valuation of $100 to $200, thirty-nine cents. That is gross value—on the value of the ore sent away to the smelter, and they determine the value and the settlement is made on that basis. Those rates are from Romley and St. Elmo to Leadville. It is a joint rate with the D. & R. G. There is a blanket rate on the Romley branch. This branch has been

operated on a joint rate with the D. & R. G. as long as the ore, as I understand it, used to move down to Pueblo, but when the smelter was closed up down there, they put the rates in—they might have been in years before—in fact, they were in in June, 1918. Any traffic of any character over or to this branch has to be joined with the D. & R. G. because there is no connection between this branch and any other branch of the Colorado & Southern as it is now being operated.

W. P. HAYDEN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Dier:

My name is W. P. Hayden; Assistant General Manager, Colorado & Southern Railway Company; residence, Denver. I have been connected with the Colorado & Southern Railway ever since it has been in existence, and with the property for practically thirty years. I was connected with its predecessor. For that length of time I have been quite familiarly acquainted with the Gunnison Division and in close touch with that property all of those years. I was acquainted with the line when it was operated through to Gunnison. I have been considerably interested in the testimony here regarding the revival of mining, which has been its chief industry, and which we all regret has been practically lost. We have heard from time to time about the revival of mining along the South Park Railroad, and as long ago as the winter of 1904, there was considerable talk, and the management at that time was somewhat convinced that perhaps mining would be revived right along this very line that we are talking about, right through this Buena Vista-Romley territory, and a few miles beyond; and on the strength of that, in the summer of 1904, we put on a straight passenger train for the purpose of moving prospectors back and forth in this mining territory, but after [fol. 196] having that in operation the entire summer, we found that it was a losing proposition—the revival did not materialize. This passenger train ran from Como to Gunnison, which is right through Buena Vista, right through Romley, and right through St. Elmo—right through. We only operated that for the summer because we found out that the long looked revival did not materialize. Now, when that line was operated through, we did move coal from the Gunnison territory, but when Mr. Collins and Mr. Tabor testified here about the trains of coal, I doubt very much if they took into consideration that the majority of the coal was Colorado & Southern engine coal from which no revenue was derived. That is the way we supplied our locomotives, from the Gunnison territory, and the bulk of that coal was company coal. I don't recollect how many cars of coal they handled by one locomotive up through there. Six or eight or twelve. That piece of track was a very expensive one to operate, due to snow conditions. I have seen times when during the winter it has cost us a thousand dollars to haul $60 worth of freight. That

is through the Alpine Tunnel just beyond Hancock. The winters are very serious up there. I haven't the altitude. I don't know whether our card shows it or not. It is right around 12,000 feet, as I remember it; between 11,600 and 11,700. When it gets over 11,000 feet a few hundred feet don't make any difference.

We heard something yesterday about the granite business on the Romley branch. That is the first I have ever heard of any granite business there, in my experience with the road. I dare say the granite has been there ever since the mountains have been there, and it was there certainly when labor was cheap and when freight rates were cheap, but no one seemed to take advantage to ship any of it. Some 23 or 24 years ago here in Denver the Government put up this beautiful Mint Building, and they found a sufficient amount of granite within 68 or 70 miles of Denver—practically the entire amount of granite for the construction of that building came from within a radius of 70 miles of Denver. A few years later the Government put up the beautiful Post Office Building at Colorado Springs, and they went up here some 80 or 90 miles on our line for the granite. At the present time, there is a Masonic Building being built here, and some of the granite for that building is being hauled 30 to 40 miles from Denver; so, I don't think there is very much in this great granite deposit. We have got worlds of it all around here in close proximity to Denver, enough to last us for a lifetime or two.

Some mention was made, I believe, by Mr. Whatley—he brought out the question about ties along that line which I would like to clear up. Such timber as is suitable for ties along that little piece of railroad is so high—it is away up near the top—that it is very expensive to get out the ties. We have had for a great many years a tie contractor that has cut ties all along the line of the South Park Railroad, and when he could cut them at a reasonable cost, we purchased our ties from him that were cut there, but when the time came that he could not cut them as cheaply as we could ship them, why, of course, we discontinued it. I simply wanted to clear up that point about the ties.

Another matter is with reference to the bridges on the right-of-way. In case the rails should be taken up and the right-of-way used for tractors, the bridges, I will say right here, would not be removed—they will never be removed if we take up the rails. It would not pay us to remove those bridges and ship them into Denver—it would not pay us to do that. I think the right of way [fol. 197] is owned by the Colorado and Southern.

We would be glad to have the Examiner to go up and see that country. We would be more than pleased to go there with you. I say that for the reason that I do not believe that I can picture vividly enough by words the actual conditions in that territory that the railroad is contending with in trying to keep that line open and operating. There is nothing there; there is no business. For instance, we have had a number of statements submitted here prepared by our General Auditor, which are a matter of evidence. There is one in particular that I wish to refer to, and that is Exhibit No.

8, I believe, which is a statement showing the number of cars, tonnage and revenue by commodities on the Buena Vista branch for the year 1921. You will note in the grand total that the total revenue is $5,048.46. I want to say right here that the wages of the engineer and fireman alone on that little branch for the year 1921 exceeded the total revenue which we received, according to this statement, by something over $100, to say nothing of the trainman's wages, the section hands, station expense, or anything else. It is a pitiable condition when you cannot even earn the wages of an engineer and a fireman.

Some mention has been made about the earnings on the line. I should like permission to submit in evidence here a statement showing the operating revenues, operating expenses, and the taxes on the entire line. I mean of the Platte Canon, Leadville and Gunnison Districts, which is the South Park Division.

By Mr. Whatley: I object; the Leadville District is in no way involved, and is entirely disconnected, and operated as a separate unit, and if we go into that, we will be here until next week. It is not proper rebuttal testimony, either.

The Witness: This covers the figures in the Gunnison District, Platte Canon and Leadville—those three districts comprise the division. It simply shows the great deficit we are operating under in the mountain railroad.

(Applicant's Exhibit 17 was thereupon offered and received in evidence over the objection of protestants.)

We wish, also to submit in evidence a statement which we overlooked yesterday, which simply shows the shipments from the various mines located on this Buena Vista—Romley branch for the years 1916 to 1921 inclusive. It gives you the shipper's name individually.

(Applicant's Exhibit 18 was thereupon offered and received in evidence over the objection of protestants.)

There is just one thing in the Questionnaire that I wish to draw attention to for a moment, and that is Question 11. I am simply doing this so that there won't be any misunderstanding. The question reads: "The approximate population of the whole territory tributary to the line in question, with explanation of the method by which the limits of such territory were defined." The answer is: "Approximate population is 993 people, figures being taken from United States Census for 1920, limits defined by the Census."

I do not want it understood that on this branch there are 993 people, because 903 of them live in Buena Vista, and are served by the D. & R. G. on the main line—a broad gauge railroad—so the number of people is but 90. The same people are also served by this [fol. 198] line, if they have occasion to use it—it is there for them if they want to use it, but unfortunately they do not use it to any great extent. Now, our case is an open book here—our cards are on the table. We have been looking forward and operating this

railroad from month to month and year to year, hoping that business would develop so that we could pay even our operating expenses. The business has not developed. We appreciate the business that our patrons have given us. We want to help them, and we have endeavored to help them, but we feel that we cannot continue year by year with a deficit of something like $25,000 in our operating income. Now, in order to assist all that we possibly can, I wish to state right here that the Colorado & Southern Railroad will lease this line, or this branch, to these mine owners and mill operators, on the rental basis of $5.00 a year, provided they will operate it, pay all operating expenses, pay the taxes on the line and the equipment, and in the event of their failure to operate the line that we then receive an order from the Commission to junk it. I have already stated that if the road is abandoned and the rails taken up we will leave the bridges intact. We will not disturb the bridges.

Cross-examination.

By Mr. Whatley:

I don't think our Board of Directors have ever passed any resolution to the effect of leasing this line as I suggested. I don't know that it is necessary for them to do so. I said that as far as I know this bed of granite has been up there since the mountains have been there. I assume that is true also of the ore bodies that have been testified to this morning.

Whereupon, at 12:50 o'clock P. M., February 4, 1922, the hearing in said matter was closed.

Exhibits

15. Exhibits referred to in the transcript of testimony and attached thereto as follows:

[fol. 99] Exhibit No. 1—Docket 1572—Date, 2/3/22

The Colorado and Southern Railway Company

General Balance Sheet, Month of November, 1921

Assets

Investments:	
Investment in Road	$68,472,982.01
" " Equipment	10,807,906.65
Deposits in lieu of Mortgaged Property sold	35,284.10
Miscellaneous Physical Property	194,177.90
Investments in Affiliated Companies:	
(a) Stocks	5,962,151.10
(b) Bonds	11,332,327.12
(c) Notes	1,323,001.55
(d) Advances	145,147.77

Other Investments:

(a) Stocks		53.00
(b) Bonds		1,127,560.76
(c) Notes		95,000.00
(d) Advances		13,746.55
(e) Miscellaneous		4,835,830.00
Total		$104,345,168.51

Current Assets:

Cash	$3,962,155.75
Time Drafts and Deposits	900,000.00
Special Deposits	315,959.56
Loans and Bills Receivable	200.00
Traffic and Car Service Balances Receivable	149,430.58
Net Balance Receivable from Agents & Conductors	146,139.49
Miscellaneous Accounts Receivable	861,748.40
Material & Supplies	2,083,610.29
Other Current Assets	7,868.16
Total	$8,427,112.23

Deferred Assets:

Working Fund Advances	$1,742.60
Other Deferred Assets	631,182.33
Total	$632,924.93

Unadjusted Debits:

Insurance Premiums Paid in Advance		$8,258.65
Discount on Funded Debt		182,161.83
Other Unadjusted Debits		436,629.33
Securties Issued or Assumed Unpledged	$2,443,370.55	
Securities Issued or Assumed Pledged	4,190,000.00	
Total		$627,049.81
Grand Total		$114,032,255.48

Office of Comptroller, Denver, Colorado, January 7, 1922.

[fol. 200] Liabilities

Stock:		
Capital Stock, Common		$31,000,000.00
Preferred		17,000,000.00
Total		$48,000,000.00
Governmental Grants:		
Grants in Aid of Construction		$20,048.00
Total		$20,048.00
Long Term Debt:		
Funded Debt Unmatured Book Liability	$55,992,270.55	
Held by Carrier	6,633,370.55	
Actually Outstanding		$49,358,900.00
Total		$49,358,900.00
Current Liabilities:		
Traffic and Car Service Balances Payable		$193,707.77
Audited Accounts & Wages Payable		1,162,604.51
Miscellaneous Accounts Payable		316,508.85
Interest Matured Unpaid		51,645.25
Dividends Matured Unpaid		1,390.00
Unmatured Interest Accrued		389,387.51
Unmatured Rents Accrued		23,117.98
Other Current Liabilities		63,462.37
Total		$2,201,824.24
Deferred Liabilities:		
Other Deferred Liabiilties		$64,522.50
Total		$64,522.50
Unadjusted Credits:		
Tax Liability		$886,473.07
Reserve for Maintenance & Operation—Guaranty Per		213,036.16
Accrued Depreciation—Equipment		5,510,804.66
Other Unadjusted Credits		1,137,613.42
Total		$7,747,927.31

Corporate Surplus:	
Additions to Property thru Income & Surplus..	$204,643.49
Appropriated Surplus not Specifically Invested..	500,000.00
Income Balance January 1 to date.....	536,549.03
Profit & Loss Balance since January 1, 1921....	19,826.82*
Profit & Loss Balance December 31, 1920.....	5,417,667.73
Total.....	$6,639,033.43
Grand Total	$114,032,255.48

Office of Comptroller, Denver, Colorado, January 7, 1922.

[fol. 201] EXHIBIT No. 2—DOCKET 1572—DATE 2/3/22

This Exhibit is identical in all respects with the table set forth in answer to question 7 in the return to questionnaire hereinbefore set out in full, excepting that the last column of this Exhibit is for 11 months of 1921 instead of the 6 months shown in the former table. Omitting as duplications the tabulations for the years 1916 to 1920, inclusive, the exhibit is as follows:

Question No. 7. A copy of the applicant's income account for each of the five years next preceding the current year, and of each income account for that portion of the current year for which figures are available.

Operating Income:	11 mos., 1921
Railway Operating Revenues.....	$12,199,989.74
Railway Operating Expenses	9,547,285.11
Net Revenue from Railway Operations..	2,652,704.63
Railway Tax Accruals.....	761,928.28
Uncollectible Railway Revenues.....	1,954.33
Railway Operating Income.....	1,888,822.02

[*Red in copy.]

	11 mos., 1921
Nonoperating Income:	
Hire of Freight Cars—Credit Balance	851,965.23
Rent from Locomotives	177,661.36
Rent from Passenger Train Cars	71,350.28
Rent from Work Equipment	4,122.91
Joint Facility Rent Income	28,646.36
Income from Lease of Road	31,967.32
Miscellaneous Rent Income	21,392.51
Miscellaneous Nonoperating Physical Property	3,097.44
Separately Operated Properties—Profit:	
Dividend Income	202,050.24
Income from Funded Securities	420,907.52
Income from Unfunded Securities & Accounts	296,779.69
Miscellaneous Income	1,806.44*
Total Nonoperating Income	2,108,134.42
Gross Income	3,996,956.44
Deductions from Gross Income:	
Hire of Freight Cars—Debit Balance	904,763.20
Rent for Locomotives	103,066.46
Rent for Passenger Train Cars	58,596.10
Rent for Work Equipment	3,030.97
Joint Facility Rents	83,710.60
Rent for Leased Roads	102,932.00
Miscellaneous Rents	274.08
Miscellaneous Tax Accruals	5,157.00
Separately Operated Properties—Loss:	
Interest on Funded Debt	1,960,787.97
Interest on Unfunded Debt	75.84
Amortization of Discount on Funded Debt	12,469.93
Maintenance of Investment Organization	.....
Miscellaneous Income Charges	55,543.26
Total Deductions from Gross Income	3,290,407.41
Net Income	706,549.03
Dispositions of Net Income:	
Dividend Appropriations of Income	170,000.00
Income Appropriated for Investment in physical prop.	.....
Total Appropriations of Income	170,000.00
Income Balance	536,549.03

Office of Comptroller, Denver, Colo., Jan. 25, 1922.

[*Red in copy.]

[fol. 202] EXHIBITS 3 AND 4—DOCKET 1572—DATE, 2/3/22

Exhibits 3 and 4 are identical in all respects with the first and second tables respectively set forth in answer to question 8 in the Return to Questionnaire hereinbefore set out in full, excepting that these exhibits are brought down to November 30, 1921, instead of June 30, 1921. Omitting as duplications the tabulations for the years 1916 to 1920, inclusive, the exhibits are as follows:

EXHIBIT 3

Question No. 8. If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rate basis.

The Colorado and Southern Railway Company

Comparative Statement of Operation—Line Buena Vista to Romley—Showing Gross and Net Operating Revenue Years 1916 to 1920, Inclusive and 11 Months of 1921

	11 mo., 1921	Total
Revenue	6,159.91	80,603.50
Expenses	31,530.73	185,912.74
Net Opr. Rev.	25,370.82*	105,309.24*
Taxes	15,583.73	106,716.87
Ry. Opr. Inc.	40,954.55*	212,026.11*
Interest	22,550.00	145,550.00
Deficit	63,504.55*	357,576.11*

NOTE.—Figures shown above are not allocated to this line on mileage basis but are as nearly accurate as can be obtained under basis as explained in answer to Question No. 9.

Office of General Auditor, Denver, Colorado, February 1st, 1922.

[*Red in copy.]

[fol. 203] EXHIBIT 4

Question No. 8. If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis.

Statement of Revenue on Line—Romley to Buena Vista—Years 1916 to 1920, Inclusive, and Eleven Months of Year 1921

Year	Freight	Passenger	Mail	Express	Other	Total
Jan. to Nov., Inc., 1921.....	4,787.64	811.29	266.67	93.80	200.51	6,159.91
Total	$63,096.53	$12,397.28	$1,175.08	$1,270.34	$2,664.27	$80,603.50

NOTE.—No mail carried by The Colorado and Southern Railway Company over line between Romley to Buena Vista for years 1916-1917 and 1918.

Office of General Auditor, Denver, Colorado, January 21, 1922.

[fol. 204] EXHIBIT No. 5—DOCKET 1572—DATE 2/3/22

Exhibit No. 5 is an exact duplication of the third table set forth in answer to Question No 8 in the return to the Questionnaire hereinabove set out in full, excepting that the last colum thereof is for 11 months of 1921. Omitting as duplications the tabulations for the years 1916 to 1920, inclusive, the exhibit is as follows:

Question No. 8. If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis.

The Colorado and Southern Railway Company

Operating Expenses and Taxes—Buena Vista-Romley Line

	1-1, to 11-30-21
Maintenance of Way & Structures	10,265.74
Transportation:	
Station Service	1,540.05
Train Service:	
Enginemen Wages	4,751.94
Fuel for Locos	3,083.14
Trainmen's Wages	4,193.49
Other Train Expenses	1,198.25
Total Train Service	13,226.82
Other Transp. Expenses	781.54
Total Transp. Expenses	15,548.41
Maintenance of Equipment:	
Locomotive Repairs	2,097.90
Freight Car Repairs	336.12
Passenger Car Repairs	145.21
Other M. of E. Expenses	1,091.03
Total M. of E. Expenses	3,670.26
Traffic	435.82
General	1,610.50
Total Operating Expenses	31,530.73
Taxes	20,836.20
Grand total	52,366.93

Office of General Auditor, Denver, Colorado, January 24, 1922.

Exhibit No. 6 is in all respects an exact duplication of the table set forth in the answer to Question 14 in the Return to the Questionnaire hereinbefore set forth, excepting that the last column is for 11 months of 1921. Omitting as duplications the tabulations for the years 1916 to 1920, inclusive, the exhibit is as follows:

Question No. 14. The tonnage handled by the line in question, classified by principal commodities, for the years 1916 to 1920, inclusive, and eleven months of 1921 stating separately the tonnage (a) originating and destined to points on the line and (b) interchanged with connecting carriers and moving over other lines.

A. Local Shipments Originating and Destined to Points on the Colorado & Southern Railway Company

Commodities:	1921, Jan., to Nov., inc.		Total	
	Tons	Revenue	Tons	Revenue
Castings	.....	.....	20	98.00
Cement	.....	.....	33	49.75
Coal	..	.....	68	68.48
Cordwood	.....	.....	30	45.00
Grain	.....	.....	48	158.13
Hay	32	108.06	330	547.54
Household Goods	.....	.....	6	10.89
Lumber	.....	.....	1,004	1,398.85
Oil	.....	.....	27	75.38
Other Products of Forest	.....	.....	40	60.00
Other Products of Manufacture	.....	.....	10	18.00
Ore	.....	.....	520	260.30
Potatoes	.....	.....	10	16.50
Sand	.....	.....	65	49.70
Merchandise L. C. L.	115	776.26	1,254	8,743.54
Totals	147	884.32	3,465	11,600.06

EXHIBIT No. 6—Continued

B. Foreign Interchanged With Connecting Carriers and Moving Over Other Lines

Commodities:	1921, Jan., to Nov., inc.		Total	
	Tons	Revenue	Tons	Revenue
Bar and Sheet Steel	.....	.....	53	109.46
Castings and Machinery	.....	.....	102	379.64
Coal	260	295.76	21,021	16,205.50
Explosives	.....	.....	12	89.44
Hay	.....	.....	7	42.33
Lumber	.....	.....	150	336.81
Other Products of Manufacture	.....	.....	109	668.67
Oil	.....	.....	40	97.19
Ore	2,262	3,316.32	24,503	28,985.65
Potatoes	.....	.....	13	23.45
Miscellaneous	.....	.....	35	67.82
Merchandise L. C. L.	39	291.24	1,292	4,490.51
Totals	2,561	3,903.32	47,337	51,496.47

Recapitulation

Local	147	884.32	3,465	11,600.06
Foreign	2,561	3,903.32	47,337	51,496.47
Totals	2,708	4,787.64	50,802	63,096.53

Office of Gen. Auditor, January 18, 1922.

[fol. 206] EXHIBIT No. 7—DOCKET 1572—DATE, 2/3/22

Question No. 16. The Passenger Traffic handled on the line in question for the years 1916 to 1920 inclusive and eleven months of the year 1921, giving separately the number of local and connecting line passengers, (if the latter designation is applicable) and the revenue derived from each class.

The Colorado and Southern Railway Company

Statement of Passengers and Revenue Accruing to the Romley-Buena Vista Line for the Calendar Years 1916, 1917, 1918, 1919, 1920, and January to November, 1921, Inclusive. Local Business and Business in Connection with Foreign Lines Shown Separately.

	Local		Connecting lines	
	Passengers	Revenue	Passengers	Revenue
1916	3,711	$4,009.18	1	$2.18*
1917	2,569	2,748.02	35	47.35
1918	1,589	1,799.57	9	9.05
1919	1,819	1,852.70	1	.26
1920	1,126	1,113.94	5	8.10
1921 (Jan. 1st to Nov. 30th, Incl.)	742	811.29	0	....
Total	11,556	$12,334.70	49	$62.58

Office of General Auditor, Denver, Colorado, January 17th, 1922.

[*Red in copy.]

[fol. 207] EXHIBIT No. 8—DOCKET 1572—DATE 2/3/22

The Colorado and Southern Railway Co.

Statement Showing Number of Cars, Tonnage, and Revenue by Commodities on Buena Vista Branch for Year 1921

Business Between Buena Vista and Romley

	Local			Foreign			Total		
	No. cars	Tons	Revenue	No. cars	Tons	Revenue	No. cars	Tons	Revenue
Coal	..	..	.....	11	263	$300.02	11	263	$300.02
Hay	1	7	$26.83	....	.....	.....	1	7	26.83
Other Ores	..	..	.....	95	2,361	3,443.64	95	2,361	3,443.64
Merchandise	..	42	371.81	....	18	151.10	....	60	522.91
Total	1	49	$398.64	106	2,642	$3,894.76	107	2,691	$4,293.40

Business Between Intermediate Stations and Romley or Buena Vista

	Local			Foreign			Total		
	No. cars	Tons	Revenue	No. cars	Tons	Revenue	No. cars	Tons	Revenue
Coal	..	..	.....	2	50	$57.59	2	50	$57.59
Hay	5	30	$97.22	....	.....	.....	5	30	97.22
Merchandise	..	79	438.43	....	23	161.82	....	102	600.25
Total	5	109	$535.65	2	73	$219.41	7	182	$755.06
Grand Total	6	158	$934.29	108	2,715	$4,114.17	114	2,873	$5,048.46

Office of General Auditor, Denver, Colorado, January 31, 1922.

[fol. 208] EXHIBIT No. 9—DOCKET 1572—DATE, 2/3/22

The Colorado and Southern Railway Company

Net Railway Operating Income for Period January 1, 1916, to November 30, 1921, Compared with 6% on Investment Allowed under Transportation Act, 1920

	Operating Income					
	1916	1917	1918	1919	1920	11 mos., 1921
Railway Operating Revenues:						
Freight	7,036,030	8,278,757	10,114,942	9,701,857	11,934,164	9,122,704
Passenger	1,510,323	1,913,524	2,019,673	2,510,935	3,023,812	2,235,552
Mail	118,378	119,878	113,360	107,375	318,033	159,165
Express	121,428	220,854	232,934	198,411	278,425	187,602
All Other Transportation	289,046	255,443	313,620	250,073	374,084	286,956
Incidental	94,569	158,048	132,919	185,168	267,241	174,281
Joint Facility	18,390	20,160	20,240	22,825	28,195	33,730
Total Railway Operating Revenues	9,188,164	10,966,664	12,947,688	12,976,644	16,223,954	12,199,990

Operating Income—Continued

Railway Operating Expenses:

	1916	1917	1918	1919	1920	11 mos., 1921
Maintenance of Way and Structures	1,037,964	1,021,845	1,481,243	2,086,269	2,587,479	1,811,533
Maintenance of Equipment	1,733,591	1,880,993	2,899,036	3,108,389	3,436,936	2,664,008
Traffic	126,191	131,729	99,141	104,019	145,867	134,006
Transportation	2,539,137	3,372,308	4,539,092	4,855,575	5,669,197	4,302,701
Miscellaneous Operations	46,349	73,728	62,429	90,478	125,962	90,697
General	269,398	322,464	427,637	418,221	609,599	555,450
Transportation for Investment—Cr.	.....	5,763*	1,680*	1,686*	2,533*	11,110*
Total Railway Operating Expenses	5,752,630	6,797,304	9,506,898	10,661,265	12,572,507	9,547,285
Net Revenue from Railway Operations	3,435,534	4,169,360	3,440,790	2,315,379	3,651,447	2,652,705
Railway Tax Accruals	487,558	554,468	564,000	567,628	880,123	761,928
Uncollectible Railway Revenues	611	1,268	1,035	4,592	2,798	1,954
Railway Operating Income	2,947,365	3,613,624	2,875,755	1,743,159	2,768,526	1,888,823
Equipment Rents (net)	3,051*	46,110*	32,010*	59,187*	124,257	35,643
Joint Facility Rents (net)	30,678*	35,124*	40,045*	45,246*	57,681*	55,065*

Net Railway Operating Income	2,913,636	3,532,390	2,803,700	1,638,726	2,835,102	1,869,401
Operating Ratio—Per Cent.	62.61	61.98	73.43	82.16	77.49	78.26
Investment in Road & Equipment (Including Colorado Railroad)	82,319,227	82,757,053	81,176,385	82,582,390	84,808,658	85,336,680
6% on Investment	4,939,153	4,965,423	4,870,583	4,954,943	5,088,519	4,693,517
Increase or decrease over Net Railway Operating Income	2,025,517*	1,433,033*	2,036,883*	3,316,217*	2,253,417*	2,824,116*

NOTE.—Results shown above for calendar year 1918, 1919 and January and February 1920 are from operation by U. S. R. R. A.

Office of Comptroller, Denver, Colorado, February 1, 1922.

[*Red in copy.]

[fol. 209] EXHIBIT No. 10—DOCKET 1572—DATE, 2/3/22

The Colorado and Southern Railway Company

Amount of Pay Rolls for Month of December, 1921, on Buena Vista Branch

Station—Buena Vista	$129.06
Trainmen—1 Conductor, 1 Brakeman	363.19
Enginemen—1 Engineer, 1 Fireman	417.14
M. P. & C. Engine Watchman	80.25
Maint. of Way—Mt. Princeton—St. Elmo & Buena Vista	494.72
	$1,484.36

Buena Vista	$93.58
	99.75
Mt. Princeton	93.58
	55.91
St. Elmo	55.10
	96.80
	$494.72

Office of General Auditor, Denver, Colorado, February 2, 1922.

[fol. 209½] EXHIBIT 11—DOCKET 1572—DATED, 2/3/22

This exhibit is pages 1 to 44, inclusive, of the 22nd Annual Report of the Board of Directors of the Colorado & Southern Railway Company (Year 1920).

(Here follows Exhibit 11, marked side folio pages 210-249½)

[fol. 250] EXHIBIT No. 12—DOCKET 1572—DATE, 2/13/22

This Exhibit is a profile map of the line in question. It is very long and shows the grades, curves, altitudes, etc., of the line. Plaintiff asks the Court to send it up as an original Exhibit for the reason that it cannot be successfully reproduced or printed in the record.

Twenty-second Annual Report

OF THE

Board of Directors

OF

The Colorado & Southern Railway Company

TO THE

Stockholders

For the Year Ended December 31, 1920

THE COLORADO & SOUTHERN RAILWAY COMPANY

DIRECTORS.

RALPH BUDD.....St. Paul
J. H. BRADBURY.....Denver
C. G. BURNHAM.....Chicago
CHARLES DONNELLY.....St. Paul
HOWARD ELLIOTT.....New York
JAMES N. HILL.....New York
HALE HOLDEN.....Chicago
E. T. NICHOLS.....New York
CHARLES E. PERKINS.....Burlington
A. D. PARKER.....Philadelphia
C. I. STURGIS.....Chicago
ROBERT RICE.....Denver
O. M. SPENCER.....Chicago

EXECUTIVE COMMITTEE.

HALE HOLDEN, *Chairman*

C. G. BURNHAM	CHARLES DONNELLY
RALPH BUDD	J. H BRADBURY

OFFICERS.

HALE HOLDEN.....*President and Chairman of Executive Committee, Chicago, Ill.*
C. G. BURNHAM.....*Executive Vice President, Chicago, Ill.*
ROBERT RICE.....*Vice President and General Manager, Denver, Colo.*
H. R. SAFFORD.....*Assistant to the President, Chicago, Ill.*
B. F. JAMES.....*Secretary and Treasurer, Denver, Colo.*
C. I. STURGIS.....*Assistant Secretary and Assistant Treasurer, Chicago, Ill.*
O. M. SPENCER.....*General Counsel, Chicago, Ill.*
E. E. WHITTED.....*General Solicitor, Denver, Colo.*
J. H. BRADBURY.....*Comptroller, Denver, Colo.*
E. I. GRENFELL.....*General Auditor, Denver, Colo.*
R. C. GOWDY.....*Chief Engineer, Denver, Colo.*
EDWARD T. NICHOLS AND NICHOLAS TERHUNE..... } *Fiscal Agents, 32 Nassau St., New York.*
EUGENE A. BERNHOLZ AND NICHOLAS STOCKHAMMER. } *Transfer Agents, 32 Nassau St., New York.*

Above are directors and officers as of May 26, 1921.
Annual meeting of stockholders on third Thursday in May of each year at Denver, Colo.

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MILEAGE.

COLORADO & SOUTHERN LINES.

THE COLORADO & SOUTHERN RAILWAY CO.
FORT WORTH & DENVER CITY RAILWAY CO.
THE WICHITA VALLEY RAILWAY CO.

MILES OF ROAD AT CLOSE OF YEAR.

STATE.	LINE OWNED.			Line operated under lease or contract.	Line owned, not operated.	Total mileage operated.
	Main line.	Branches and spurs.	Total.			
Wyoming,	165.16	.48	165.64	9.26	31.13	143.77
Colorado,	754 01	96.88	850.89	124.89	103.63	872.15
New Mexico,	83.36	.....	83.36	.....	.....	83.36
Texas,	710.00	.....	710.00	.....	.....	710.00
	1,712.53	97.36	1,809.89	134.15	134.76	1,809.28

STATE.	LINE OWNED.			
	Miles of road.	Miles of second track.	Miles of yard track and sidings.	Total.
Wyoming,	165.64	.....	30.59	196.23
Colorado,	850.89	2.55	317.07	1,170.51
New Mexico,	83.36	.....	12.73	96.09
Texas,	710.00	.21	199.43	909.64
	1,809.89	2.76	559.82	2,372.47

SINGLE TRACK MILEAGE OWNED BY ROADS.

The Colorado & Southern Railway Company,	978.70
The Colorado Railroad Company,	121.19
Fort Worth & Denver City Railway Company,	454.14
The Wichita Valley Railway Company,	51.99
Wichita Falls & Oklahoma Railway Company,	22.07
Wichita Valley Railroad Company,	60.88
Abilene & Northern Railway Company,	38.06
Stamford & Northwestern Railway Company,	82.86
Total,	1,809.89

SINGLE TRACK MILEAGE OPERATED BY ROADS.

The Colorado & Southern Railway Company,	1,099.28
Fort Worth & Denver City Railway Company,	454.14
The Wichita Valley Railway Company,	255.86
Total,	1,809.28

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Twenty-Second Annual Report

CHICAGO, January 1, 1921.

To the Stockholders of The Colorado & Southern Railway Company:

Herewith is submitted the Twenty-second Annual Report of your Board of Directors for the year ended December 31, 1920, setting forth comparative statements for the fiscal period of The Colorado & Southern Railway Company, Fort Worth & Denver City Railway Company and The Wichita Valley Railway Company.

THE COLORADO & SOUTHERN RAILWAY COMPANY.

COMPARATIVE STATEMENT OF CORPORATE INCOME.

YEARS ENDED DECEMBER 31.

1920.		1919.
$ 413,535.30	†.....Standard Return,.....	$ 2,481,211.88
	RAILWAY OPERATING REVENUES.	
$ 10,212,960.99	.....Freight,.....	.....
2,656,946.46	.....Passenger,.....	.....
136,820.29	.....Mail,.....	.....
235,162.17	.....Express,.....	.....
319,228.16	.....All other transportation,.....	.....
228,111.58	.....Incidental,.....	.....
27,511.22	.....Joint facility,.....	.....
$ 13,816,740.87	.....Total railway operating revenues,.....	.....
	RAILWAY OPERATING EXPENSES.	
$ 2,376,876.44	.....Maintenance of way and structures,.....	$ ‡6,317.99
3,168,450.11	.....Maintenance of equipment,.....	.....
125,689.84	.....Traffic,.....	.....
5,020,585.67	.....Transportation,.....	.....
113,642.20	.....Miscellaneous operations,.....	.....
541,574.34	.....General,.....	‡43,933.80
3,899.65 Cr.	.....Transportation for investment—Cr.,.....	.....
$ 11,342,809.95	.....Total railway operating Expenses,.....	$ 50,251.79
$ 2,887,377.22	.....Net,.....	$ 2,430,960.09
$ 784,224.89	.....Railway tax accruals,.....	.....
3,159.60	.....Uncollectible railway revenue,.....	.....
$ 2,099,992.73	....Railway operating income and standard return,...	$ 2,430,960.09
	NON-OPERATING INCOME.	
$ 150,978.36	.....Equipment rents (Net),.....	.....
33,268.51 Dr.	.....Joint facility rents (Net),.....	.....
59,462.00	.....Miscellaneous rents,.....	$ 59,476.23
$ 1,352,530.15	.....Dividends and miscellaneous interest,.....	1,430,820.99
509,161.76 *	.....Miscellaneous income,.....	*285,429.38
959,687.98	.....(Estimated amount due under Guaranty, Transportation Act, 1920),.....	.....
$ 2,998,551.74	.....Total non-operating income,.....	$ 1,775,726.60
$ 5,098,544.47	.....GROSS INCOME.....	$ 4,206,686.69
	DEDUCTIONS FROM GROSS INCOME.	
$ 112,398.06	.....Miscellaneous rents,.....	$ 111,959.97
2,140,438.47	.....Interest on funded debt,.....	2,105,095.45
1,988.88	.....Interest on unfunded debt,.....	1,750.24
13,573.93	.....Amortization of discount on funded debt,.....	13,539.28
224,078.83 *	.....Miscellaneous income charges,.....	*190,395.38
$ 2,492,478.17	.....Total Deductions from Gross Income,.....	$ 2,422,740.32
$ 2,606,066.30	.....Net Income,.....	$ 1,783,946.37
	DISPOSITION OF NET INCOME.	
$ 680,000.00	.....Dividends,.....	$ 680,000.00
$ 680,000.00	.....Total Appropriations of income,.....	$ 680,000.00
$ 1,926,066.30	.....Income balance transferred to profit and loss,.....	$ 1,103,946.37

†January and February, 1920. ‡Corporate.

*Includes "Lap-over" items credited and charged by Federal Administration.

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FORT WORTH & DENVER CITY RAILWAY COMPANY.

COMPARATIVE STATEMENT OF CORPORATE INCOME.
YEARS ENDED DECEMBER 31.

1920.		1919.
$ 315,231.08	†.....Standard Return,.....	$ 1,891,386.40
	RAILWAY OPERATING REVENUES.	
7,175,940.38	.....Freight,.....	.....
3,457,155.07	.....Passenger,.....	.....
134,023.17	..... Mail, ...	.....
151,697.28	.....Express, ...	.....
103,563.70	.....All other transportation,.....	.....
174,157.19	.....Incidental, ...	.....
348.12	.....Joint facility,.....	.....
$ 11,196,884.91	.....Total railway operating revenues,.....	.....
	RAILWAY OPERATING EXPENSES.	
$ 1,863,733.33	.....Maintenance of way and structures,.....	.....
2,667,990.15	.....Maintenance of equipment,.....	.....
90,521.65	.....Traffic,.....	.....
5,310,743.20	.....Transportation,.....	.....
82,048.82	.....Miscellaneous Operations,.....	.....
335,483.06	..... General, ...	$ ‡18,120.69
16,902.70	Cr.....Transportation for investment—Cr.,.....	.....
$ 10,383,617.51	.....Total railway operating expenses,.....	$ 18,120.69
$ 1,128,498.48	.....Net,.....	$ 1,873,265.71
$ 333,160.75	..... Railway tax accruals,.....	.....
3,062.44	.....Uncollectible railway revenues,.....	.....
$ 792,275.29	....Railway operating income and standard return,....	$ 1,873,265.71
	NON-OPERATING INCOME.	
$ **240,176.18**	Dr.....Equipment rents (Net),.....	.....
2,921.24	Dr.....Joint facility rents (Net),.....	.....
11,708.49	.....Miscellaneous rents,.....	.....
106,990.42	.....Dividends and miscellaneous interest,.....	$ 33,174.49
538,000.04	*.....Miscellaneous income,.....	*95,577.59
1,113,733.12	.....(Estimated amount due under Guaranty, Transportation Act, 1920),.....	.....
$ 1,527,334.65	.....Total non-operating income,.....	$ 128,752.08
$ 2,319,609.94	.....Gross income,.....	$ 2,002,017.79
	DEDUCTIONS FROM GROSS INCOME.	
$ 18,843.50	.....Miscellaneous rents,.....	$ 18,342.00
544,511.29	.....Interest on funded debt,.....	534,716.29
19,003.92	.....Interest on unfunded debt,.....	2,999.20
2,755.58	.....Amortization of discount on funded debt,.....	-3,261.00
258,445.53	*.....Miscellaneous income charges,.....	*127,221.84
$ 843,559.82	.....Total deductions from gross income,.....	$ 686,540.33
$ 1,476,050.12	.....Net income,.....	$ 1,315,477.46
	DISPOSITION OF NET INCOME.	
$ 639,152.32	.....Dividends.....	$ 639,152.32
$ 639,152.32	.....Total appropriations of income,.....	$ 639,152.32
$ 836,897.80	....Income balance transferred to profit and loss,.....	$ 676,325.14

† January and February, 1920. ‡Corporate

*Includes "Lap-Over" items credited and charged by Federal Administration.

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THE WICHITA VALLEY RAILWAY COMPANY.

COMPARATIVE STATEMENT OF CORPORATE INCOME.

YEARS ENDED DECEMBER 31.

1920.		1919.
$ 58,727.84	†.....Standard Return,.....	$ 352,367.05
	RAILWAY OPERATING REVENUES.	
$ 1,015,016.63	.....Freight,.....	.....
436,800.54	.....Passenger,.....	.....
23,458.49	.....Mail,.....	.....
34,859.40	.....Express,.....	.....
4,445.97	.....All other transportation,.....	.....
11,851.43	.....Incidental,.....	.....
$ 1,526,432.46	.....Total railway operating revenues,.....	.....
	RAILWAY OPERATING EXPENSES.	
$ 397,228.24	.....Maintenance of way and structures,.....	.....
189,565.04	.....Maintenance of equipment,.....	.....
1,262.95	.....Traffic,.....	.....
764,243.71	.....Transportation,.....	.....
19,577.20	.....General,.....	$ ‡2,002.84
450.50	.....Transportation for investment—Cr.,.....	.....
$ 1,372,327.64	.....Total railway operating expenses,.....	2,002.84
$ 212,832.66	.....Net,.....	$ 350,364.21
$ 57,120.48	.....Railway tax accruals,.....	.....
553.63	.....Uncollectible railway revenue,.....	.....
$ 155,158.55	....Railway operating income and standard return,....	$ 350,364.21
	NON-OPERATING INCOME.	
$ **169,755.42**	Dr.....Equipment rents (Net),.....	.....
8,433.00	.....Joint facility rents (Net),.....	.....
3,345.89	.....Miscellaneous rents,.....	$ 350.00
4,389.48	.....Dividends and miscellaneous interest,.....	702.49
132,673.03	*.....Miscellaneous income,.....	*10,709.04
270,738.12	.....(Estimated amount due under Guaranty, Transportation Act, 1920),.....	.....
$ 249,824.10	.....Total non-operating income,.....	$ 11,761.53
$ 404,982.65	.....Gross income,.....	$ 362,125.74
	DEDUCTIONS FROM GROSS INCOME.	
$ 203,392.80	.....Miscellaneous rents,.....	$ 203,392.80
38,450.00	.....Interest on funded debt,.....	.....
.....	.....Interest on unfunded debt,.....	38,450.00
.....	.....Amortization of discount on funded debt,.....	.....
19,753.53	*.....Miscellaneous income charges,.....	*1,875.54
$ 261,596.33	.....Total deductions from gross income,.....	243,718.34
$ 143,386.32	.....Income balance transferred to profit and loss,.....	$ 118,407.40

†January and February, 1920. ‡Corporate.

*Includes "Lap Over" items credited and charged by Federal Administration.

Federal control of these Companies' Transportation System ended on February 29, 1920.

The annual compensation for their use, as provided by the contracts of October 10, 1918, between the Director General and these Companies was as follows:

The Colorado & Southern Railway Company	$2,481,211.88
The Wichita Valley Railway Company	352,367.05
Fort Worth & Denver City Railway Company	1,891,386.40

The compensation which will be allowed for the months of January and February, 1920, is understood to be 60/366 of the annual compensation.

These figures are based on the average net operating revenues of the Companies for the three year period July 1, 1914, to June 30, 1917, inclusive. They are subject to a revision (not yet completed) by the Interstate Commerce Commission.

The foregoing statements cannot be accepted as a final showing of the income of the Corporation for the year 1920. The final figures will not be known until complete settlements are reached of the Companies' claims against the Railroad Administration and for the Guaranty Period under the Transportation Act, 1920.

The Interstate Commerce Commission in its Annual Report of carriers has called for a table designed to show the income separately for the two months of Federal control, six months of the Guaranty Period and four months of the Corporate period. Such tables are included in the report of the Comptroller.

For the Guaranty Period, this Company adopted the plan authorized in the Interstate Commerce Commission's Classification of Accounts, of keeping its accounts strictly on the basis of accruals. This change affected but slightly the corporate income for the year as payments made subsequent to the end of Federal control on February 29, 1920, but attaching to transactions had during the period, were charged or credited to the account of the Director General.

General

Operating results for the entire year compared with those of the previous year show the following:

		Operating Revenues	
The C. & S. Ry. Co.	Increase	$3,295,014.42 or	25.39%
F. W. & D. C. Ry. Co.	Increase	2,089,644.27 or	18.72%
The W. V. Ry. Co.	Increase	631,042.13 or	51.41%
		Operating Expenses	
The C. & S. Ry. Co.	Increase	$2,062,328.37 or	19.25%
F. W. & D. C. Ry. Co.	Increase	3,838,404.45 or	49.42%
The W. V. Ry. Co.	Increase	545,873.49 or	59.83%

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GENERAL

		Net Operating Revenue	
The C. & S. Ry. Co.	Increase	$1,232,686.05 or	54.42%
F. W. & D. C. Ry. Co.	Decrease	1,748,760.18 or	51.51%
The W. V. Ry. Co.	Increase	85,168.64 or	27.04%

		Operating Income	
The C. & S. Ry. Co.	Increase	$1,182,909.77 or	74.47%
F. W. & D. C. Ry. Co.	Decrease	1,903,146.43 or	67.33%
The W. V. Ry. Co.	Decrease	42,702.57 or	23.01%

Percentages of operating revenues required for operating expenses:

	1920	1919
The C. & S. Ry. Co.	78.50%	82.54%
F. W. & D. C. Ry. Co.	87.58%	69.59%
The W. V. Ry. Co.	78.46%	74.33%

During the year the following changes have been made in the Long Term Debt of these Companies:

THE COLORADO & SOUTHERN RAILWAY COMPANY

Fifteen 6% Notes, Nos. 1 to 15, both inclusive, dated January 15, 1920, @ $70,000.00 each, were issued under Equipment Trust Agreement No. 19, dated January 15, 1920, between the Director General of Railroads and The Colorado and Southern Railway Company, for the following assigned equipment:

300 55-ton capacity all steel hopper coal cars, numbers 18,000-18299.

5 Heavy Santa Fe type locomotives with tenders, numbers 905-909.

Total notes issued $1,050,000.00

FORT WORTH & DENVER CITY RAILWAY COMPANY

Fifteen 6% Notes, Nos. 1 to 15, both inclusive, dated January 15, 1920, @ $17,200.00 each, were issued under Equipment Trust Agreement No. 20, dated January 15, 1920, between the Director General of Railroads and Fort Worth & Denver City Railway Company, for the following assigned equipment:

5 Heavy Mikado locomotives with tenders, numbers 451-455.

Total notes issued $258,000.00

Deferred rentals retired under Equipment Trust Agreement— Series "C" $112,000.00

In accordance with a general and systematic plan, physical improvements and developments of the system, including additions and betterments to way, structures and equipment, have been continued during

the year. There were changes in Road and Equipment Accounts of the several Companies covered by this report, including leased lines, as follows:

Description	C. & S.	F.W.& D.C.	W. V.
Structures and Machinery....	$156,608.19	$298,692.83	$10,897.35
Bridges.....	11,610.91	29,599.52	350.90
Tracks.....	260,713.58	422,145.19	20,743.79
Land.....	1,743.63	26,266.39	.....
Laying tie plates.....	47,351.56	23,042.02	.....
Other additions and betterments.....	163,732.19	95,322.67	13,811.82
Equipment.....	246,319.93	597,832.53	570.13
	$888,079.99	$1,492,901.15	$46,373.99
Less:			
Equipment retired.....	350,808.74	46,159.96	33,396.73
	$537,271.25	$1,446,741.19	$12,977.26

Work has continued throughout the year on the preparation of data required by the Interstate Commerce Commission under their general order of March 1, 1913, and supplements, for the Valuation of Railroads. It is believed that the Engineering and Land Reports of the Bureau of Valuation will be received before the end of 1921, and that the Tentative Valuation will be announced early in 1922.

The Colorado & Southern Railway Company

During the year, 27.01 miles of new 90-lb. ARA Type "A" rail were laid in the main line, replacing worn 75-lb. and 85-lb. rail. Two miles of this rail were laid on the Fort Collins District, 14.78 miles on the Trinidad District, and 10.23 miles on the New Mexico District. The 75-lb. and 85-lb. rail released was used in replacing worn rail of lighter section on branch lines, in mine spurs, passing tracks, etc. On the narrow gauge main line, 14 miles of 50-lb., 52-lb. and 60-lb. relay rail were laid, releasing worn 40-lb. rail. About 12,000 feet of 56-lb. rail were laid on narrow gauge main lines, replacing worn rail of the same weight.

26,180 90-lb. rail anchors and 46,978 85-lb. rail anchors were applied to main line track.

74,000 tie plates were applied on standard gauge main line track, and 33,203 plates were applied on narrow gauge main line track.

413,403 cross ties were renewed.

On the Wyoming District, 10 miles of main track were ballasted with gravel received from the C. B. & Q pit at Guernsey or with waste

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rock secured from the lime rock quarries at Murke. 2.8 miles of main track on the New Mexico District were ballasted with volcanic cinders. The Erie ditcher was kept in service practically the entire year and a large number of cuts were ditched, the dirt taken from cut ditches being used for widening narrow embankments.

The work of strengthening wooden trestles by the addition of one or more stringers was continued and a number of wooden culverts were replaced in permanent form.

The installation of standard roadway signs has been continued, and corrected bridge numbers were applied to all bridges on the Northern Division.

A deposit of suitable gravel was purchased at a point about two miles west of Altus, on the Northern Division, and a spur track about two miles in length was constructed to it. A loading track for the use of the Great Western Sugar Company in loading lime rock was built on the gravel spur, together with necessary wye tracks at Altus.

There were constructed and extended during the year passing, yard and industrial tracks, as follows:

	Miles, New Tracks:	Miles, Extensions:	Miles, Total:
Northern Division	5.38	1.28	6.66
South Park Division	.36	.03	.39
Southern Division	6.41	.07	6.48
Total	12.15	1.38	13.53

Ten stalls of the roundhouse at Denver were lengthened to 100 feet, in order to accommodate heavy power using this house, and in connection with this work, a new engine dispatcher's office was constructed, and toilet and wash room facilities for roundhouse employees were provided. Miller Boiler Washout systems were installed in the Denver and Trinidad roundhouses, and the heating plants in both of these roundhouses were overhauled and put in first class condition. At Boulder Junction, an Ogle mechanical coaling station, having a capacity of 50 tons, was constructed. New 80,000 gallon water tanks on steel sub-structures were constructed at Ludlow and Wellington, and a 50,000 gallon tank on a steel sub-structure was constructed at Farthing. 10-inch track cranes were built in connection with each of the above tanks. The 50,000 gallon wooden tank at Wilson was replaced by a 100,000 gallon concrete reservoir with track crane and a track crane was also installed at Folsom, New Mexico.

New stockyards were constructed at Farmers and Bellevue Junction on the Northern Division, and at Greenville and Mt. Dora

on the Southern Division. A new frame depot replacing the old car body depot was constructed at Greenville, and the old depot at Watervale was moved to Branson and enlarged for use at that point.

17,500 feet of standard snow fence were built on the Wyoming District.

During the year, 3 heavy Pacific type passenger locomotives were purchased from the Chicago, Burlington & Quincy Railroad. In addition to the 3 locomotives purchased, improvements to freight and passenger engines were made as follows:

1 freight engine equipped with Duplex stoker.

10 freight engines equipped with mechanical coal pushers.

3 passenger and 1 freight engine equipped with Schmidt superheaters, and 5 passenger and 1 freight engine equipped with Walschaert valve gears.

During the year ninety-five 40-foot 80,000-lb. capacity stock cars were built in the Denver shops, using trucks and other material from dismantled Ingoldsby dump cars, thirty-eight box cars were equipped with steel center sills, and Mogul steel ends were applied to fifteen box cars.

At Denver an electric welding plant was installed, together with one Universal tool grinder, one high speed Universal drill, and one Niles heavy duty car wheel boring machine. At Trinidad shop a new car wheel mounting plant was installed, consisting of one new 80-inch 400-ton hydraulic wheel press, one second-hand axle lathe, and one second-hand 42-inch car wheel boring machine.

During the year, the application of safety appliances to freight equipment was completed.

During the year 1920, two demonstartion cars were operated by the Agricultural Department which have resulted in considerable good to the farmers and to the Company, in that it has interested the farmers in the better use of lands and particularly in the matter of potato production in the Falcon District and vicinity of Chyenne, Chugwater and Wheatland.

A "Better Farming" exhibit car was successfully operated emphasizing and demonstrating principles of agriculture as applied to non-irrigated lands, and many requests have been received for further information, assistance and suggestions looking toward the improvement of farm operations on non-irrigated lands.

Six issues were made of our seed bulletins, having a circulation of 925 copies and resulting in the transfer of approximately 300,000 pounds of seeds of all kinds, having an estimated cash sale value of over $11,000.00. Large numers of circulars and bulletins have been sent out on the following subjects: Land information; feed bulletins; dairy cow prices; potato production, cultivation, care, handling and

loading; silo construction; suggestions to homesteaders and dry farmers; lists of live-stock for sale; marketing bulletins; and news notes to farmers' organizations.

Fourteen meetings of more or less importance were addressed during the year on such subjects as marketing, colonization, dairying, silos, potato production and crop rotation. Many other farmers' meetings and gatherings were addressed on various subjects.

In addition to the above, the Agricultural Department has assisted farmers in ordering feed, seed, and stock of preferred class. Information was sent to persons who were insterested in locating grain elevators, feed and seed houses, a flour mill, mercantile, fruit and vegetable stores and a hardware and implement business. There were also established in towns during 1920 ten new business concerns of a particular interest to agriculture. The Agricultural Department assisted in the organization and establishment of four farmers' co-operative shipping and marketing associations.

Four hundred twenty-four inquiries were received during the year for agricultural and live stock raising opportunities and lands. Personal letters and literature were sent to all and a regular follow-up system is in operation with respect to these prospective settlers. Thirteen counties of Colorado served by the Colorado & Southern show an increase of 5,552 farms, or 38 per cent in the last decade. In Wyoming, the three counties served by the Colorado & Southern show there was an increase of 1,902, or 100 per cent in number of farms. Eighty-five carloads of immigrant materials were moved into Colorado & Southern territory in Wyoming during 1920, most of these coming from Texas and Oklahoma. Union County, New Mexico, shows an increase of nearly 1,500 farms, or 150 per cent in ten years. Over 100 immigrant cars were moved in during 1920.

The Agricultural Department has had the co-operation and assistance of the agricultural colleges of Wyoming, Colorado and New Mexico, together with county agricultural agents along our lines. More good farmers are needed in our territory. The dry land sections adjacent to the Colorado & Southern Railway are only 18 per cent cultivated and can support successfully 300 per cent more families.

In 1917, the Colorado & Southern, Fort Worth & Denver City and the Wichita Valley lines handled 1,932,526 tons, representing agricultural, live stock, forest and farm implement products, and in 1919 these three lines handled 2,512,505 tons of the same products, an increase of 30 per cent over 1917.

The number of carloads of live stock handled into the Denver Union Stock Yards by the Colorado & Southern in 1910 was 3,953 cars, and in 1920, 10,046 cars, showing an increase of 154 per cent.

In dairying the production has increased rapidly in Colorado & Southern territory. Union County, New Mexico, leads that state in

dairy production, having over 10,000 cows in the county classed as milk stock in 1920 as compared with 5,000 in 1917. Of the sixty-three counties in the State of Colorado, fourteen counties, or twenty-two per cent, which are served by the Colorado & Southern have approximately 60,000 or twenty-four per cent of the total number of milk cows in the State. The Wyoming sections are likewise increasing the dairy production, particularly at Chugwater and Wheatland.

Fort Worth & Denver City Railway Company

During the year, 15.48 miles of 85-lb. rail and 28.91 miles of 90-lb. ARA type "A" rail were laid in the main line, replacing worn rail of lighter section. A portion of the old rail released was sent to the Wichita Valley lines to replace 56-lb. rail, the balance being stored or used for replacing light and worn rail in passing tracks, yard tracks, etc.

40,185 rail anchors were applied on main line track, and 118,225 tie plates were applied on main line track.

119,766 cross ties were renewed in the main line, and 24,762 were renewed in sidings and yard tracks.

Approximately 32 miles of repair gravel ballast were applied on tracks previously ballasted.

An Erie ditcher and two 20-yard dump cars were purchased and put in service during the year and a considerable mileage of cut ditches were cleaned out and embankments widened, resulting in improved track and roadbed conditions. Several wooden trestels were strengthened by adding one or more stringers and several wooden culverts were replaced in permanent form.

Installation of standard roadway signs was continued throughout the year.

The introduction of heavier power has made it necessary to extend many of the passing tracks in order to save delays to trains at meeting points.

There were constructed and extended during the year passing, yard and industrial tracks, as follows:

	Miles, New Tracks:	Miles, Extensions:	Miles, Total:
Childress—North	4.15	2.62	6.77
Childress—South	5.34	2.09	7.43
Total	9.49	4.71	14.20

About 50 acres of land were purchased at North Yard, six miles north of Fort Worth, for yard and terminal purposes, and 22,323 feet of yard tracks were laid. The grading has been completed for six additional tracks which can be laid as need for them arises.

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90-ft. turntables were constructed at Fort Worth, Childress and Amarillo, replacing 70-foot tables which were too light to handle heavier power.

A 150-ton coaling station was constructed at Dalhart, and modern sand driers were installed at the coal chutes at Childress, Wichita Falls, Amarillo and Texline.

The roof of the Childress roundhouse which was destroyed by fire in the fall of 1919, was replaced, and the new freight depot and office building at Wichita Falls was completed and put in service.

Five heavy Mikado Locomotives, with tenders, Nos. 456 to 460, inclusive, were purchased during the year from the Baldwin Locomotive Works at a price of $56,257.99 each, or a total payment in cash of $281,-289.95.

Safety appliances were applied to eighty-one freight cars.

The result of making the additions to terminal yards and passing tracks has been to relieve congestion and insure an easy flow of traffic over the entire system.

Oil production along the line of this Company has been steady throughout the year, but there has been a considerable decrease in crude oil and its products received from connections. Although there were large increases in the production of crops throughout this territory, the farmers were unable to market them profitably and consequently were unable to make improvements or increase the area under cultivation.

The Wichita Valley Lines

During the year 3.65 miles of 75-lb. relay rail were laid in the main line, replacing worn 52-lb., 54-lb. and 56-lb. rail.

1.7 miles of track were ballasted with cinder ballast and 1 mile was ballasted with gravel ballast, in addition to which approximately 4,800 cubic yards of cinders were used in repairing track previously ballasted.

41,659 cross ties were renewed in main line and side tracks.

The installation of standard roadway signs has been continued.

Industry tracks were built for the following concerns:

Wichita Falls Electric Spur		1,074 ft.
Coyne Lumber Company Spur	Wichita Falls	458 ft.
M. O. McDowell Spur	Wichita Falls	906 ft.
Western Sand & Gravel Spur	Seymour	1,983 ft.
Abilene Gas & Elec Co. Spur		982 ft.

Safety appliances were applied to twenty freight cars.

The Denver & Interurban Railroad Company

The property has been operated by a Receiver since June 12, 1918, and the following comparative table shows the result of operation for the years 1920-1919.

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	1920	1919
Operating revenues	$296,784.26	$276,344.59
Operating expenses	363,735.32	177,104.47
Net revenue from operations Dr.	$ 66,951.06	$ 99,240.12
Railway tax accruals	5,465.25	10,150.00
Railway operating income Dr.	$ 72,416.31	$ 89,090.12
Non-operating income	4,682.25	2,978.91
Gross income Dr.	$ 67,734.06	$ 92,069.03
Deductions from gross income	108,257.29	115,736.46
Net income Dr.	$175,991.35Dr.	$23,667.43

On Labor Day, September 6, 1920, a head-on collision occurred between a regular and an excursion train which resulted in the death of twelve and the injury of one hundred and thirty-four passengers. Claims amounting to a substantial sum were presented and settled before December 31, 1920; the charges to operating expenses on account of this unfortunate accident adversely affected the results on this property for the year.

The Colorado Springs & Cripple Creek District Railway Company

The property was operated by the Receiver throughout the spring and summer months of 1920. Operation was discontinued about October 1, 1920, and has not since been resumed.

The Trinity & Brazos Valley Railway Company

The property was returned to the Receiver under provisions of Transportation Act, 1920, on March 1st. The Receiver filed written acceptance of the guarantee provision and has succeeded in obtaining advances for losses in operation during the guarantee period. Statements of all accounts during the Federal control period and the Guaranty Period have been filed preparatory to a hearing and final settlement.

Following is the report of the Comptroller with statements prepared by him.

By order of the Board of Directors.

HALE HOLDEN,
President.

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REPORT OF THE COMPTROLLER

DENVER, COLORADO, January 1, 1921.

MR. HALE HOLDEN,
President, Chicago, Ill.

DEAR SIR:—I herewith submit statements of Colorado & Southern Lines for the fiscal year ended December 31, 1920:

General balance sheets,
Income Accounts,
Profit and loss accounts,
Investment in road and equipment,
Capital Liabilities,
Statements of operating expenses,
Revenue freight carried during the year,
Statistics of Operations,
Equipment owned.

Respectfully,

J. H. BRADBURY,
Comptroller.

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CAPITAL LIABILITIES OF THE

On December

DESIGNATION	Term or charter limit. Date of issue.	Term or charter limit. Date of maturity	Total par value authorized.
CAPITAL STOCK.			
The Colorado & Southern Ry. Co.:			
Common,	1898	1948	$48,000,000.00
First preferred,			
Second preferred,			
The Colorado R. R. Co.,			
Fort Worth & Denver City Ry. Co.:	1906	1956	5,000,000.00
(including $2,539,992.00 "Stamped"),			
The Wichita Valley Ry. Co.,	1873	1933	9,375,000.00
Wichita Falls & Oklahoma Ry. Co.,	1890	1940	1,020,000.00
Wichita Valley R. R. Co.,	1903	1953	23,000.00
Abilene & Northern Ry. Co.,	1905	1955	61,000.00
Stamford & Northwestern Ry. Co.,	1906	1956	40,000.00
Fort Worth & Denver Terminal Ry. Co.,	1909	1959	82,500.00
	1890	1940	15,000.00
MORTGAGE BONDS.			
The Colorado & Southern Ry. Co.:			
First mortgage,	1899	1929	20,000,000.00
Refunding and extension mortgage,	1905	1935	100,000,000.00
The Colorado R. R. Co.,	1908	1938	
Fort Worth & Denver City Ry. Co.:			
First Mortgage,	1881	1921	18 M per mile
The Wichita Valley Ry. Co.,	1890	1940	20 M per mile
Wichita Falls & Oklahoma Ry. Co.,	1906	1936	30 M per mile
Wichita Valley R. R. Co.,	1906	1936	30 M per mile
Abilene & Northern Ry. Co.,	1906	1936	30 M per mile
Stamford & Northwestern Ry. Co.,	1909	1939	
Fort Worth & Denver Terminal Ry. Co.,	1907	1937	2,500,000.00
EQUIPMENT TRUST OBLIGATIONS.			
The Colorado & Southern Ry. Co.:			
Equipment Trust Agreement No. 19, U. S. R. R. A.,	1920	1935	
Fort Worth & Denver City Ry. Co.:			
Equipment lease, series "C,"	1915	1925	
Equipment Trust Agreement No. 20, U. S. R. R. A.,	1920	1935	
CERTIFICATES OF INDEBTEDNESS.			
Fort Worth & Denver City Ry. Co.,	1909	1935	
Total,			

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COLORADO & SOUTHERN LINES

31, 1920.

Total par value outstanding.	Total par value owned or controlled by C. & S. Ry. Co.	Total par value in hands of public.	Interest on funded debt in hands of public.		
			Rate.	When payable.	Amount accrued during year.
$ 31,000,000.00		$ 31,000,000.00			
8,500,000.00		8,500,000.00			
8,500,000.00		8,500,000.00			
2,233,600.00	$ 2,233,100.00	500.00			
9,375,000.00	9,364,416.00	10,584.00			
1,020,000.00	1,019,100.00	900.00			
23,000.00	22,100.00	900.00			
61,000.00	60,100.00	900.00			
40,000.00	39,100.00	900.00			
82,500.00	81,600.00	900.00			
15,000.00	14,100.00	900.00			
19,402,000.00	2,000.00	19,400,000.00	4	F. & A.	$ 775,999.97
35,610,270.55	6,631,370.55	28,978,900.00	4½	M. & N.	1,304,063.50
2,233,000.00	2,233,000.00		5	J. & J.	
8,176,000.00		8,176,000.00	6	J. & D.	490,560.00
769,000.00	769,000.00		5	J. & J.	
257,000.00	257,000.00		6	J. & J.	
744,000.00	744,000.00		6	J. & J.	
516,000.00	516,000.00		6	J. & J.	
1,872,880.00	1,872,880.00		6	F. & A.	
728,000.00	428,000.00	300,000.00	6	J. & D.	18,000.00
1,050,000.00		1,050,000.00	6	J. & J.	60,375.00
504,000.00		504,000.00	4½	M. & N.	25,620.00
258,000.00		258,000.00	6	J. & J.	14,835.00
299,917.52	299,917.52		4½	M. & N.	
$ 133,270,168.07	$ 26,586,784.07	$ 106,683,384.00			$ 2,689,453.47

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GENERAL BALANCE SHEETS

ASSETS—December 31, 1920.

THE COLORADO

Investment in road and equipment,	$	4,572,607.39
Other investments,		3,750.00
Deferred assets,		500.00
Grand Total,	$	4,576,857.39

WICHITA FALLS & OKLAHOMA

Investment in road and equipment,	$	280,809.98
Current assets,		11,220.02
Grand Total,	$	292,030.00

WICHITA VALLEY

Investment in road and equipment,	$	826,278.31
Miscellaneous physical property,		7,450.00
Current assets,		40,277.02
Grand Total,	$	874,005.33

ABILENE & NORTHERN

Investment in road and equipment,	$	560,731.13
Current assets,		11,704.00
Grand Total,	$	572,435.13

STAMFORD & NORTHWESTERN

Investment in road and equipment,	$	1,906,156.01
Current assets,		99,342.38
Grand Total,	$	2,005,498.39

FORT WORTH & DENVER TERMINAL

Investment in road and equipment,	$	827,937.62
Current assets,		1,500.00
Grand Total,	$	829,437.62

OF LEASED LINES

LIABILITIES—December 31, 1920.

RAILROAD COMPANY.

Capital stock	$2,233,600.00
Funded debt unmatured	2,233,000.00
Non-negotiable debt to affiliated companies	110,257.39
Grand Total	$4,576,857.39

RAILWAY COMPANY.

Capital stock	$ 23,000.00
Funded debt unmatured	257,000.00
Current liabilities	12,030.00
Grand Total	$ 292,030.00

RAILROAD COMPANY.

Capital stock	$ 61,000.00
Funded debt unmatured	744,000.00
Current liabilities	69,005.33
Grand Total	$ 874,005.33

RAILWAY COMPANY.

Capital stock	$ 40,000.00
Funded debt unmatured	516,000.00
Current liabilities	16,435.13
Grand Total	$ 572,435.13

RAILWAY COMPANY.

Capital stock	$ 82,500.00
Funded debt unmatured	1,872,880.00
Current liabilities	50,118.39
Grand Total	$2,005,498.39

RAILWAY COMPANY.

Capital stock	$ 15,000.00
Funded debt unmatured	728,000.00
Non-negotiable debt to affiliated companies	84,937.62
Current liabilities	1,500.00
Grand Total	$ 829,437.62

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The Colorado & Southern Railway Company

REPORT OF THE COMPTROLLER

For the Fiscal Year Ended
December 31, 1920

GENERAL BALANCE SHEET

December 31, 1920

ASSETS

INVESTMENTS:		
Investment in road and equipment		$ 79,180,854.23
Deposits in lieu of mortgaged property sold		31,784.10
Miscellaneous physical property		194,977.90
Investments in affiliated companies:		
Stocks	$ 5,960,276.10	
Bonds	11,332,327.12	
Notes	1,323,001.55	
Advances	386,225.55	19,001,830.32
Other investments:		
Stocks	$ 53.00	
Bonds	1,127,560.76	
Notes	95,000.00	
Advances	13,746.55	
Miscellaneous	3,800,000.00	5,036,360.31
Total investments		$103,445,806.86
CURRENT ASSETS:		
Cash		$ 2,486,480.74
Special deposits		584,845.81
Loans and bills receivable		200.00
Traffic and car service balances receivable		352,152.76
Net balances receivable from agents and conductors		298,821.24
Miscellaneous accounts receivable		1,044,475.20
Material and supplies		1,688,995.75
Interest and dividends receivable		461,637.40
Other current assets		32,604.49
Total current assets		$ 6,950,213.39
DEFERRED ASSETS:		
Working fund advances		$ 2,044.12
Other deferred assets		37,301.76
Total deferred assets		$ 39,345.88
U. S. GOVERNMENT DEFERRED ASSETS		$ 7,764,576.06
UNADJUSTED DEBITS:		
Rents and insurance premiums paid in advance		$ 5,688.43
Discount on funded debt		194,631.76
Other unadjusted debits		364,276.35
Securities issued or assumed—Unpledged	$ 2,443,370.55	
Securities issued or assumed—Pledged	4,190,000.00	
Total unadjusted debits		$ 564,596.54
Grand total		$118,764,538.73

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GENERAL BALANCE SHEET

December 31, 1920

LIABILITIES

STOCK:		
Capital stock,		
Common,		$ 31,000,000.00
Preferred,		17,000,000.00
Total stock,		$ 48,000,000.00
LONG-TERM DEBT:		
Funded debt unmatured,		
Book liability,	$ 56,062,270.55	
Held by carrier,	6,633,370.55	
Actually outstanding,		$ 49,428,900.00
CURRENT LIABILITIES:		
Traffic and car service balances payable,		$ 224,626.92
Audited accounts and wages payable,		1,925,189.33
Miscellaneous accounts payable,		120,056.22
Interest matured unpaid,		53,165.50
Dividends matured unpaid,		512,918.00
Unmatured interest accrued,		569,550.04
Unmatured rents accrued,		11,477.88
Other current liabilities,		47,096.42
Total current liabilities,		$ 3,464,080.31
DEFERRED LIABILITIES:		
Other deferred liabilities,		$ 60,429.15
U. S. GOVERNMENT DEFERRED LIABILITIES,		$ 6,732,505.16
UNADJUSTED CREDITS:		
Tax liability,		$ 660,176.59
Operating reserves,		279,872.23
Accrued depreciation—Equipment,		3,979,378.62
Other unadjusted credits,		36,885.45
Total unadjusted credits,		$ 4,956,312.89
CORPORATE SURPLUS:		
Additions to property through income and surplus,		$ 204,643.49
Appropriated surplus not specifically invested,		500,000.00
Profit and loss credit balance,		5,417,667.73
Total corporate surplus,		$ 6,122,311.22
Grand Total,		$118,764,538.73

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INCOME ACCOUNT FOR THE YEAR ENDED DECEMBER 31, 1920

	ITEM (a)	Federal operations (January and February) (b)	Guaranty period (six months ended August 31) (c)	Four months ended December 31 (d)	Total (e)	Corporate income for the year (f)
	OPERATING INCOME:					
501	Railway operating revenues,	$ 2,460,621.41	$ 7,149,559.34	$ 6,640,477.42	$ 16,250,658.17	$ 13,816,740.87
531	Railway operating expenses,	2,150,029.64	6,627,153.85	4,254,239.52	13,031,423.01	11,342,898.95
	Net revenue from railway operations,	$ 310,591.77	$ 522,405.49	$ 2,386,237.90	$ 3,219,235.16	$ 2,473,841.92
532	Railway tax accruals,	$ 108,062.46	$ 449,413.09	$ 311,129.80	$ 868,605.35	$ 784,224.89
533	Uncollectible railway revenues,	2,272.76	1,272.73	569.53	4,115.02	3,159.60
	Railway operating income,	$ 200,256.55	$ 71,719.67	$ 2,074,538.57	$ 2,346,514.79	$1,686,457.43
	NON-OPERATING INCOME:					
503	Hire of freight cars-credit balance,	$ 102,180.41	$ 122,379.19		$ 224,559.60	$ 108,006.19
504	Rent from locomotives,	83,263.82	106,827.35	$ 39,179.85	229,271.02	146,107.90
506	Rent from passenger train cars,	18,049.07	34,510.49	30,098.86	82,658.42	69,522.56
507	Rent from work equipment,	3,836.84	6,226.79	2,325.95	12,389.58	8,864.86
508	Joint facility rent income,	21,972.84	18,872.95	6,621.93	47,467.72	44,376.82
509	Income from lease of road,					*448,408.61
510	Miscellaneous rent income,					21,949.20
511	Miscellaneous non-operating physical property,					2,639.49
513	Dividend income,					638,764.64
514	Income from funded securities,	30,486.08			30,486.08	521,546.02
515	Income from unfunded securities and accounts,	6,991.02			6,991.02	192,219.49
519	Miscellaneous income,	3,019.02			3,019.02	†1,468.849.74
	Total non-operating income,	$ 269,799.10	$ 288,816.77	$ 78,226.59	$ 636,842.46	$ 3,671,255.52
	Gross income,	$ 470,055.65	$ 360,536.44	$ 2,152,765.16	$ 2,983,357.25	$ 5,357,712.95

DEDUCTIONS FROM GROSS INCOME:						
536 Hire of freight cars-debit balance,	$	$	$ 105,506.83	$ 105,506.83	$	
537 Rent for locomotives,	34,873.18	84,987.25	46,568.96	166,429.39		136,966.93
538 Rent for passenger train cars,	9,246.29	27,592.78	17,612.50	54,451.57		43,173.12
540 Rent for work equipment,	202.59	639.52	762.49	1,604.60		1,383.10
541 Joint facility rents,	41,486.05	43,058.76	18,154.33	102,699.14		77,645.33
542 Rent for leased roads,						111,830.38
543 Miscellaneous rents,						567.68
544 Miscellaneous tax accruals,						5,244.73
546 Interest on funded debt,						2,140,438.47
547 Interest on unfunded debt,	17,967.61			17,967.61		1,988.88
548 Amortization of discount on funded debt,						13,573.93
549 Maintenance of investment organization,						4,000.00
551 Miscellaneous income charges,	Cr. 1,634.23			Cr. 1,634.23		214,834.10
Total deductions from gross income,	$ 102,141.49	$ 156,278.31	$ 188,605.11	$ 447,024.91	$	2,751,646.65
Net railway operating income,	$ 343,751.42	$ 204,258.13	$ 1,964,160.05	$ 2,512,169.60		
Net income,	$ 367,914.16			$ 2,536,332.34	$	2,606,066.30
DISPOSITION OF NET INCOME:						
553 Dividend appropriations of income,					$	680,000.00
Total appropriations of income,					$	680,000.00
Income balance transferred to Profit and Loss,					$	1,926,066.30

*Includes Standard Return for months of January and February, 1920—$413,535.30.

†Estimated amount due under Guaranty, Transportation Act, 1920—$959,687.98.

NOTE:—

Column (b) includes lap-over items March to December, 1920, applicable to the period of Federal Control.

Column (c) covers such items applicable to the six months ended August 31, 1920, including any adjustments of such items made to December 31, 1920.

Column (d) covers items for the four months ended December 31, 1920.

Column (e) Total of columns (b), (c) and (d).

Column (f) Complete income account as actually appearing on the corporate books.

Corporate general expenses and war taxes for January and February, 1920, and the corporate lap-overs prior to January 1, 1918, ng the period March to August, inclusive, are excluded from Column (b) to Column (e), inclusive, and included in column (f).

PROFIT AND LOSS ACCOUNT

December 31, 1920

CREDIT			
Credit balance at beginning of year		$ 3,520,150.57	
Credit balance transferred from income		1,926,066.30	
Profit on road and equipment sold		4,084.30	
Delayed income credits		37,990.25	
Donations		7,705.98	
Miscellaneous credits		2,508.19	$ 5,498,505.59
DEBIT			
Surplus appropriated for investment in physical property		$ 7,705.98	
Loss on retired road and equipment		72,485.99	
Miscellaneous debits		645.89	80,837.86
Credit balance carried to balance sheet			$ 5,417,667.73

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INVESTMENT IN ROAD AND EQUIPMENT DURING THE YEAR

Engineering,		$	6,822.07
Land for transportation purposes,			1,743.63
Grading,			28,472.37
Bridges trestles and culverts,			11,610.91
Ties,			30,361.70
Rails,			86,808.17
Other track material,			124,524.52
Ballast,			3,777.26
Track laying and surfacing,			57,392.75
Right-of-way fences,			4,491.33
Snow and sand fences and snow sheds,			4,348.22
Crossings and signs,			1,468.48
Station and office buildings,			34,559.42
Roadway buildings,			31,933.79
Water stations,			25,684.44
Fuel stations,			12,455.29
Shops and engine houses,			55,345.52
Telegraph and telephone lines,			33,876.23
Signals and interlockers,			851.58
Miscellaneous structures,	Cr.		**4.52**
Paving,	Cr.		**300.00**
Roadway machines,			8,546.56
Assessments for public improvements,			2,302.41
Other expenditures—Road,			2,818.25
Shop machinery,			71,958.84
Total expenditures for road,		$	641,849.22
Steam locomotives,			18,293.57
Freight train cars,	Cr.		**120,932.48**
Passenger train cars,	Cr.		**2,393.12**
Work equipment,	Cr.		**1,312.65**
Miscellaneous equipment,			1,855.87
Total expenditures for equipment,	Cr.	$	**104,488.81**
Interest during construction,			10.84
Other expenditures—General,	Cr.		**100.00**
Total general expenditures,	Cr.	$	**89.16**
Grand Total,		$	537,271.25

Included in the foregoing figures is an amount of $13,482.97, representing additions and betterments, less retirements, made to the property of The Colorado Railroad Company, which amount is included in investment in road and equipment of that Company.

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FEDERAL, GUARANTY PERIOD AND CORPORATE INCOME ACCOUNTS YEAR ENDED DECEMBER 31, 1920 COMPARED WITH PREVIOUS YEAR

Combining items used in arriving at Net Railway Operating Income

	1920.	1919.	Increase or Decrease
OPERATING INCOME:			
Railway operating revenues:			
Freight,	$ 11,986,501.96	$ 9,701,856.88	$ 2,284,643
Passenger,	3,028,084.65	2,510,935.00	517,149
Mail,	307,353.31	107,375.26	199,978
Express,	278,425.23	198,410.94	80,014
All other transportation,	373,279.00	250,073.54	123,205
Incidental,	269,093.56	185,167.69	83,923
Joint facility,	28,920.46	22,824.44	6,096
Total railway operating revenues,	$ 16,271,658.17	$ 12,976,643.75	$ 3,295,014
Railway operating expenses:			
Maintenance of way and structures,	$ 2,626,424.99	$ 2,092,587.37	$ 533,837
Maintenance of equipment,	3,477,595.94	3,108,389.15	369,206
Traffic,	146,119.86	104,018.94	42,100
Transportation,	5,789,035.85	4,855,574.67	933,461
Miscellaneous operations,	129,574.45	90,477.75	39,096
General,	609,554.82	462,154.84	147,399
Transportation for investment—Cr.,	Cr. 4,460.48	Cr. 1,685.66	d 2,774
Total railway operating expenses,	$ 12,773,845.43	$ 10,711,517.06	$ 2,062,328
Net revenue from railway operations,	$ 3,497,812.74	$ 2,265,126.69	$ 1,232,686
Railway tax accruals,	$ 886,205.35	$ 567,628.20	$ 318,577
Uncollectible railway revenues,	4,115.02	4,592.14	d 477
Railway operating income,	$ 2,607,492.37	$ 1,692,906.35	$ 914,586
Equipment rents (net),	$ 219,121.76	Dr.$ 59,187.21	$ 278,308
Joint facility rents (net),	Dr. 55,231.42	Dr. 45,246.20	d 9,985
Net railway operating income,	$ 2,771,382.71	$ 1,588,472.94	$ 1,182,909

d-Indicates decrease.

Note; The 1920 figures shown above are made on basis to enable comparison to be made w the 1919 figures. Balances in reserve accounts as of December 31, 1920, are not cluded in above figures. For details see pages 31 to 36.

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COMPARATIVE STATEMENT OF RAILWAY OPERATING REVENUES—FEDERAL, GUARANTY PERIOD AND CORPORATE COMBINED

	Combined figures for year 1920.	Balance in reserve accounts Dec. 31, 1920.	1920 Combined figures exclusive of reserves.	1919	Increase or Decrease.
Transportation:					
Freight,	$ 11,971,501.96	Dr. $ 15,000.00	$ 11,986,501.96	$ 9,701,856.88	$ 2,284,645.08
Passenger,	3,022,084.65	Dr. 6,000.00	3,028,084.65	2,510,935.00	517,149.65
Excess baggage,	20,445.96	.....	20,445.96	17,354.27	3,091.69
Mail,	307,353.31	.....	307,353.31	107,375.26	199,978.05
Express,	278,425.23	.....	278,425.23	198,410.94	80,014.29
Other passenger train,	52,687.42	.....	52,687.42	2,478.42	50,209.00
Switching,	294,588.70	.....	294,588.70	222,996.76	71,591.94
Special service train,	4,888.70	.....	4,888.70	7,168.19	d 2,279.49
Other freight train,	668.22	.....	668.22	75.90	592.32
Total,	$ 15,952,644.15	Dr. $ 21,000.00	$ 15,973,644.15	$ 12,768,651.62	$ 3,204,992.53
Incidental:					
Dining and buffet,	$ 122,023.97	.....	$ 122,023.97	$ 91,999.06	$ 30,024.91
Hotel and restaurant,	26,962.51	.....	26,962.51	18,349.21	8,613.30
Station and train privileges,	13,101.09	.....	13,101.09	13,579.55	d 478.46
Parcel room,	1,680.66	.....	1,680.66	739.00	941.66
Storage-freight,	9,015.92	.....	9,015.92	7,120.82	1,895.10
Storage-baggage,	6,726.74	.....	6,726.74	5,940.95	785.79
Demurrage,	29,787.76	.....	29,787.76	27,868.51	1,919.25
Rent of buildings and other property,	273.25	.....	273.25	273.00	.25
Miscellaneous,	59,521.66	.....	59,521.66	19,297.59	40,224.07
Total,	$ 269,093.56	.....	$ 269,093.56	$ 185,167.69	$ 83,925.87
Joint facility—Cr.,	$ 28,920.46	.....	$ 28,920.46	$ 23,086.80	$ 5,833.66
Joint facility—Dr.,	.....	.....	.....	Dr. 262.36	262.36
Total,	$ 28,920.46	.....	$ 28,920.46	$ 22,824.44	$ 6,096.02
Total railway operating revenues,	$ 16,250,658.17	Dr. $ 21,000.00	$ 16,271,658.17	$ 12,976,643.75	$ 3,295,014.42

d-Indicates decrease.

COMPARATIVE STATEMENT OF RAILWAY OPERATING EXPENSES—FEDERAL, GUARANTY PERIOD AND CORPORATE COMBINED

	Combined figures for year 1920.	Balance in reserve accounts Dec. 31, 1920.	1920 Combined figures exclusive of reserves.	1919.	Increase or Decrease.
MAINTENANCE OF WAY AND STRUCTURES:					
Superintendence,	$ 123,691.12		$ 123,691.12	$ 106,768.71	$ 16,922.41
Roadway maintenance,	249,905.32		249,905.32	238,895.83	11,009.49
Bridges, trestles and culverts,	103,712.55		103,712.55	93,159.15	10,553.40
Ties,	457,708.91		457,708.91	323,815.35	133,893.56
Rail,	218,809.60		218,809.60	78,769.44	140,040.16
Other track material,	65,116.71		65,116.71	108,068.24 d	42,951.53
Ballast,	2,576.79		2,576.79	1,690.75	886.04
Track laying and surfacing,	859,278.94		859,278.94	695,661.58	163,617.36
Right of way fences,	45,772.46		45,772.46	17,446.05	28,326.41
Snow and sand fences and snowsheds,	13,663.15		13,663.15	7,131.13	6,532.02
Crossings and signs,	18,349.43		18,349.43	14,360.30	3,989.13
Station and office buildings,	47,931.43		47,931.43	30,532.25	17,399.18
Roadway buildings,	18,385.63		18,385.63	12,090.68	6,294.95
Water stations,	44,804.01		44,804.01	30,387.19	14,416.82
Fuel stations,	20,424.05		20,424.05	17,558.61	2,865.44
Shops and enginehouses,	63,062.80		63,062.80	51,123.28	11,939.52
Telegraph and telephone lines,	40,518.45		40,518.45	31,887.30	8,631.15
Signals and interlockers,	4,691.12		4,691.12	2,316.69	2,374.43
Miscellaneous structures,	940.00		940.00	179.73	760.27
Roadway machines,	25,099.32		25,099.32	16,884.19	8,215.13
Small tools and supplies,	39,836.91		39,836.91	29,294.66	10,542.25
Removing snow, ice and sand,	66,626.24		66,626.24	74,451.85 d	7,825.61
Injuries to persons,	6,142.79	$ 2,360.00	3,782.79	2,403.40	1,379.39
Insurance,	7,310.39		7,310.39	1,190.06	6,120.33
Stationery and printing,	5,268.32		5,268.32	5,194.16	74.16
Other expenses,	3,434.98		3,434.98	1,835.72	1,599.26
Maintaining joint trks., yds. & other facilities—Dr.,	193,415.63		193,415.63	190,140.02	3,275.61
Maintaining joint trks., yds. & other facilities—Cr.,	Cr. **117,692.06**		Cr. **117,692.06**	Cr. **90,648.95**	d 27,043.11
Total,	$ 2,628,784.99	$ 2,360.00	$ 2,626,424.99	$ 2,092,587.37	$ **533,837.62**

d-Indicates decrease

MAINTENANCE OF EQUIPMENT:					
Superintendence	$ 112,624.28	$ 20,326.18	$ 92,298.10	$ 77,803.85	$ 14,494.25
Shop machinery	81,745.41	Cr. **3,725.60**	85,471.01	70,116.53	15,354.48
Steam locomotives—Repairs	1,374,483.82	Cr. **13,236.38**	1,387,720.20	1,205,945.78	181,774.42
Steam locomotives—Depreciation	114,620.04		114,620.04	105,979.52	8,640.52
Steam locomotives—Retirements	Cr. **4,384.99**		Cr. **4,384.99**	Cr. **392.88**	d 3,992.11
Freight train cars—Repairs	1,357,185.08	173,260.47	1,183,924.61	1,060,291.49	123,633.12
Freight train cars—Depreciation	420,514.16		420,514.16	407,807.38	12,706.78
Freight train cars—Retirements	Cr. **57,555.40**		Cr. **57,555.40**	Cr. **12,449.12**	d 45,106.28
Passenger train cars—Repairs	185,560.10	39,046.46	146,513.64	110,617.75	35,895.89
Passenger train cars—Depreciation	27,933.69		27,933.69	28,014.94	d 81.25
Passenger train cars—Retirements	Cr. **728.08**		Cr. **728.08**	500.37	d 1,228.45
Work equipment—Repairs	35,253.82	Cr **10,914.82**	46,168.64	29,757.43	16,411.21
Work equipment—Depreciation	15,533.20		15,533.20	14,204.10	1,329.10
Work equipment—Retirements	Cr. **243.00**		Cr. **243.00**	Cr. **162.87**	d 80.13
Miscellaneous equipment—Repairs	138.12		138.12		138.12
Miscellaneous equipment—Depreciation	276.84		276.84		139.20
Miscellaneous equipment—Retirements	29.94		29.94	137.64	29.94
Injuries to persons	5,661.21	2,575.00	3,086.21	2,617.04	469.17
Insurance	8,326.18		8,326.18	1,425.55	6,900.63
Stationery and printing	6,417.32	706.45	5,710.87	4,759.15	951.72
Other expenses	923.41	Cr. **705.23**	1,628.64	200.62	1,428.02
Maintaining joint equipment at terminals—Dr.	1,574.89		1,574.89	1,656.89	d 82.00
Maintaining joint equipment at terminals—Cr.	Cr. **961.57**		Cr. **961.57**	Cr. **442.01**	d 519.56
Total	$ 3,684,928.47	$ 207,332.53	$ 3,477,595.94	$ 3,108,389.15	$ 369,206.79
TRAFFIC:					
Superintendence	$ 52,795.19		$ 52,795.19	$ 43,350.22	$ 9,444.97
Outside agencies	28,084.64	$ 441.00	27,643.64	13,744.64	13,899.00
Advertising	13,085.39		13,085.39	4,624.42	8,460.97
Traffic associations	14,162.04		14,162.04	16,433.05	d 2,271.01
Industrial and immigration bureaus	6,194.72		6,194.72	4,121.02	2,073.70

d-Indicates decrease

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COMPARATIVE STATEMENT OF RAILWAY OPERATING EXPENSES—FEDERAL, GUARANTY PERIOD AND CORPORATE COMBINED—Continued

	Combined figures for year 1920.	Balance in reserve accounts Dec. 31, 1920.	1920 Combined figures exclusive of reserves.	1919.	Increase or Decrease.
Brought Forward:					
Insurance,	127.97		127.97	27.84	100.13
Stationery and printing,	32,087.15		32,087.15	21,709.63	10,377.52
Other expenses,	23.76		23.76	8.12	15.64
Total,	$ 146,560.86	$ 441.00	$ 146.119.86	$ 104,018.94	$ 42,100.92
Transportation:					
Superintendence,	$ 88,756.29		$ 88,756.29	$ 73,251.05	$ 15,505.24
Dispatching trains,	84,747.33		84,747.33	75,108.62	9,638.71
Station employees,	675,651.59		675,651.59	535,408.54	140,243.05
Weighing, inspection and demurrage bureaus,	15,578.26		15,578.26	19,512.28 d	3,934.02
Station supplies and expenses,	65,623.12		65,623.12	54,928.89	10,694.23
Yardmasters and yard clerks,	71,559.30		71,559.30	57,144.19	14,415.11
Yard conductors and brakemen,	322,748.11		322,748.11	259,121.31	63,626.80
Yard switch and signal tenders,	20,731.10		20,731.10	14,721.95	6,009.15
Yard enginemen,	190,463.96		190,463.96	150,113.83	40,350.13
Fuel for yard locomotives,	153,326.90		153,326.90	130,127.26	23,199.64
Water for yard locomotives,	9,106.23		9,106.23	8,056.56	1,049.67
Lubricants for yard locomotives,	1,280.81		1,280.81	898.69	382.12
Other supplies for yard locomotives,	3,691.84		3,691.84	3,022.54	669.30
Enginehouse expenses—Yard,	150,574.43		150,574.43	152,958.58 d	2,384.15
Yard supplies and expenses,	5,946.71		5,946.71	4,050.70	1,896.01
Operating joint yards and terminals—Dr.,	352,360.58		352,360.58	266,304.01	86,056.57
Operating joint yards and terminals—Cr.,	Cr. **150,630.06**		Cr. **150,630.06**	Cr. **111,502.94** d	39,127.12
Train enginemen,	714,162.80		714,162.80	546,244.14	167,918.66
Fuel for train locomotives,	1,253,259.64		1,253,259.64	1,119,555.01	133,704.63
Water for train locomotives,	60,568.29		60,568.29	61,416.47 d	848.18
Lubricants for train locomotives,	13,585.19		13,585.19	10,774.50	2,810.69
Other supplies for train locomotives,	23,220.76		23,220.76	15,866.70	7,354.06
Enginehouse expenses—Train,	204,354.05		204,354.05	192,474.86	11,879.19
Trainmen,	812,396.65	195.00	812,201.65	573,790.87	238,410.78
Train supplies and expenses,	243,921.09		243,921.09	195,681.80	48,239.29
Signal and interlocker operation,	716.55		716.55	180.95	535.60
Crossing protection,	37,628.11		37,628.11	30,525.95	7,102.16

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Stationery and printing,	37,383.14		37,383.14	31,129.41	6,253.73
Other expenses,	1,181.98		1,181.98	6,746.58 d	5,564.60
Operating joint tracks and facilities—Dr.,	226,551.84		226,551.84	245,448.91 d	18,897.07
Operating joint tracks and facilities—Cr.,	Cr. 78,615.47		Cr. 78,615.47	Cr. 63,501.66 d	15,113.81
Insurance,	5,193.41		5,193.41	1,209.01	3,984.40
Clearing wrecks,	33,653.40		33,653.40	22,286.92	11,366.48
Damage to property,	14,923.51	9,110.00	5,813.51	4,386.46	1,427.05
Damage to live stock on right of way,	15,636.79	3,755.00	11,881.79	15,550.47 d	3,668.68
Loss and damage—Freight,	109,267.31	12,500.00	96,767.31	110,957.12 d	14,189.81
Loss and damage—Baggage,	458.29	78.70	379.59	1,372.17 d	992.58
Injuries to persons,	45,522.36	23,100.00	22,422.36	38,749.34 d	16,326.98
Total,	$ 5,837,774.55	$ 48,738.70	$ 5,789,035.85	$ 4,855,574.67	$ 933,461.18
Miscellaneous Operations:					
Dining and buffet service,	$ 108,378.66		$ 108,378.66	$ 73,705.05	$ 34,673.61
Hotel and restaurants,	21,195.79		21,195.79	16,772.70	4,423.09
Total,	$ 129,574.45		$ 129,574.45	$ 90,477.75	$ 39,096.70
General:					
Salaries and expenses of general officers,	$ 72,627.38		$ 72,627.38	$ 48,832.82	$ 23,794.56
Salaries and expenses of clerks and attendants,	344,825.71		344,825.71	273,270.91	71,554.80
General office supplies and expenses,	28,074.05		28,074.05	20,283.36	7,790.69
Law expenses,	45,333.71		45,333.71	37,546.63	7,787.08
Insurance,	372 52		372.52	325.97	46.55
Pensions,	921.80		921.80	1,200.00 d	278.20
Stationery and printing,	21,354.69		21,354.69	18,466.46	2,888.23
Valuation expenses,	86,342.86		86,342.86	53,611.93	32,730.93
Other expenses,	5,629.24		5,629.24	5,528.97	100.27
General joint facilities—Dr.,	4,401.86		4,401.86	3,284.70	1,117.16
General joint facilities—Cr.,	Cr. 329.00		Cr. 329.00	Cr. 196.91 d	132.09
Total,	$ 609,554.82		$ 609,554.82	$ 462,154.84	$ 147,399.98
Transportation for Investment—Cr.,	Cr. $ 4,460.48		Cr. $ 4,460.48	Cr. $ 1,685.66 d	$ 2,774.82
Total operating expenses,	$ 13,032,717.66	$ 258,872.23	$ 12,773,845.43	$ 10,711,517.06	$ 2,062,328.37
Operating ratio,			78.50%	82.54% d	4.04%

d-Indicates decrease.

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COMPARATIVE STATEMENT OF RAILWAY TAX ACCRUALS, UNCOLLECTIBLE RAILWAY REVENUES, AND EQUIPMENT AND JOINT FACILITY RENTS—FEDERAL, GUARANTY PERIOD AND CORPORATE COMBINED

	Combined figures for year 1920.	Balance in reserve account Dec. 31, 1920.	1920 Combined figures exclusive of reserves.	1919.	Increase or Decrease.
Railway tax accruals,	$ 886,205.35		$ 886,205.35	$ 567,628.20	$ 318,577.15
Uncollectible railway revenues,	$ 4,115.02		$ 4,115.02	$ 4,592.14	d $ 477.12
EQUIPMENT RENTS					
Credits					
Hire of freight cars—credit balance,	$ 118,903.67		$ 118,903.67		$ 118,903.67
Rent from locomotives,	229,271.02		229,271.02	241,355.10	d 12,084.08
Rent from passenger train cars,	82,360.08		82,360.08	9,599.91	72,760.17
Rent from work equipment,	12,687.92		12,687.92	2,942.92	9,745.00
Total credits,	$ 443,222.69		$ 443,222.69	$ 253,897.93	$ 189,324.76
Debits					
Hire of freight cars—debit balance,				$ 150,950.91	d $ 150,950.91
Rent for locomotives,	$ 166,429.39		$ 166,429.39	132,644.40	33,784.99
Rent for passenger train cars,	56,066.94		56,066.94	29,216.55	26,850.39
Rent for work equipment,	1,604.60		1,604.60	273.28	1,331.32
Total debits,	$ 224,100.93		$ 224,100.93	$ 313,085.14	d $ 88,984.21
Total equipment rents—Net,	Cr. $219,121.76		Cr. $ 219,121.76	Dr. $59,187.21	$ 278,308.97
JOINT FACILITY RENTS					
Joint facility rent income,	$ 47,467.72		$ 47,467.72	$ 19,121.62	$ 28,346.10
Joint facility rents,	102,699.14		102,699.14	64,367.82	38,331.32
Total joint facility rent—Net,	Dr. $ 55,231.42		Dr. $ 55,231.42	Dr. $ 45,246.20	d $ 9,985.22

d-Indicates decrease.

EQUIPMENT

CLASS OF EQUIPMENT.	Number on December 31, 1919.	Number added during year.	Number retired during year.	Number on December 31, 1920.	Average tractive power all locomotives and average capacity all freight cars.
Steam locomotives	191	3	4	190	33,953 lbs.
Freight-train Cars:					
Box cars	2,868	1	133	2,736	
Flat cars	62		15	47	
Stock cars	1,101	95	131	1,065	
Coal cars	1,795		90	1,705	
Tank cars	28		13	15	
Refrigerator cars	57		9	48	
Caboose cars	91		7	84	
Other freight-train cars	1,177		73	1,104	
All classes of freight-train cars	7,179	96	471	6,804	36.20 Tons
Passenger-train Cars:					
Coaches	75			75	
Combination passenger cars	29			29	
Other combination cars	6			6	
Dining cars	6			6	
Baggage and express cars	20		1	19	
Other passenger-train cars	28			28	
All classes of passenger-train cars	164		1	163	
Company service cars:					
Officers' and pay cars	7			7	
Ballast cars	2			2	
Derrick cars	1			1	
Steam shovels	2			2	
Wrecking cars	4		1	3	
Other company service cars	231	108	8	331	
All classes of company service cars	247	108	9	346	
All classes of cars in service	7,590	204	481	7,313	
Miscellaneous:					
Automobiles	1			1	

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STATISTICS OF OPERATIONS

The 1920 Revenue and Expense figures in this Table are based on those shown on Page 30

ITEM	1920	1919	Increase or Decrease	
Average mileage of road operated (miles),	1,099.47	1,100.00	Dec.	.53
TRAIN-MILES				
Freight—ordinary,	1,801,760	1,747,130	Inc.	54,630
" —light,	34,357	33,570	Inc.	787
" —total,	1,836,117	1,780,700	Inc.	55,417
Passenger,	1,184,677	1,142,197	Inc.	42,480
Mixed,	100,317	103,037	Dec.	2,720
Special,	5,018	1,988	Inc.	3,030
Total transportation service,	3,126,129	3,027,922	Inc.	98,207
Work service,	80,390	60,789	Inc.	19,601
LOCOMOTIVE-MILES				
Freight—principal,	1,845,922	1,787,290	Inc.	58,632
" —helper,	120,584	121,893	Dec.	1,309
" —light,	119,200	123,461	Dec.	4,261
" —total,	2,085,706	2,032,644	Inc.	53,062
Passenger—principal,	1,184,677	1,142,197	Inc.	42,480
" —helper,	35,001	51,504	Dec.	16,503
" —light,	26,989	27,984	Dec.	995
" —total,	1,246,667	1,221,685	Inc.	24,982
Mixed train—principal,	100,317	103,037	Dec.	2,720
" " —helper,	1,258	1,744	Dec.	486
" " —light,	1,812	1,811	Inc.	1
" " —total,	103,387	106,592	Dec.	3,205
Special—principal,	5,018	1,988	Inc.	3,030
" —helper,	519	575	Dec.	56
" —light,	66	244	Dec.	178
" —total,	5,603	2,807	Inc.	2,796
Train switching,	137,377	108,090	Inc.	29,287
Yard switching—freight,	802,743	777,420	Inc.	25,323
" " —passenger,	60,556	58,860	Inc.	1,696
" " —total,	863,299	836,280	Inc.	27,019

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CAR-MILES				
Freight train—loaded,	29,793,293	29,626,723	Inc.	166,570
" " —empty,	17,154,863	14,380,019	Inc.	2,774,844
Sum of loaded and empty,	46,948,156	44,006,742	Inc.	2,941,414
Freight train—caboose,	1,787,699	1,745,890	Inc.	41,800
" " —total,	48,735,855	45,752,641	Inc.	2,983,214
Passenger train—passenger,	3,358,129	3,103,816	Inc.	254,313
" " —sleeping, parlor and observation,	1,880,739	1,568,930	Inc.	311,809
" " —dining,	287,299	193,878	Inc.	93,421
" " —other,	1,843,626	1,604,181	Inc.	239,445
" " —total,	7,369,793	6,470,805	Inc.	898,988
Mixed train—freight—loaded,	162,306	198,271	Dec.	35,965
" " —freight—empty,	103,287	100,803	Inc.	2,484
" " —caboose,	123	687	Dec.	564
" " —passenger,	165,915	143,863	Inc.	22,052
" " —other passenger-train,	4,994	31,333	Dec.	26,339
" " —total,	436,625	474,957	Dec.	38,332
Special train—freight—loaded,	26,582	31,306	Dec.	4,724
" " —freight—empty,	2,583	244	Inc.	2,339
" " —caboose,	2,820	1,903	Inc.	917
" " —passenger,	1,325	.....	Inc.	1,325
" " —sleeping, parlor and observation,	5,633	8,737	Dec.	3,104
" " —dining,	564	.....	Inc.	564
" " —other passenger-train,	145	.....	Inc.	145
" " —total,	39,652	42,190	Dec.	2,538
Total transportation service,	56,581,925	52,740,593	Inc.	3,841,332
Work service,	143,062	135,343	Inc.	7,719

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STATISTICS OF OPERATIONS—Continued

ITEM	1920	1919	Increase or Decrease
FREIGHT SERVICE			
Tons—revenue freight,	6,789,747	5,697,261	Inc. 1,092,486
" —non-revenue freight,	597,675	549,368	Inc. 48,307
" —total,	7,387,422	6,246,629	Inc. 1,140,793
Ton-miles—revenue freight,	882,016,336	805,616,645	Inc. 76,399,691
" " —non-revenue freight,	64,618,820	45,546,661	Inc. 19,072,159
" " —total,	946,635,156	851,163,306	Inc. 95,471,850
PASSENGER SERVICE			
Passengers carried—revenue,	1,146,221	1,103,450	Inc. 42,771
Passenger-miles—revenue,	95,127,825	86,760,584	Inc. 8,367,241
REVENUES AND EXPENSES			
Freight revenue,	$ 11,986,501.96	$ 9,701,856.88	Inc. $ 2,284,645.08
Passenger revenue,	3,028,084.65	2,510,935.00	Inc. 517,149.65
Passenger service train revenue,	3,680,996.57	2,836,553.89	Inc. 844,442.68
Operating revenues,	$ 16,271,658.17	$ 12,976,643.75	Inc. $ 3,295,014.42
" expenses,	12,773,845.43	10,711,517.06	Inc. 2,062,328.37
Net operating revenues,	$ 3,497,812.74	$ 2,265,126.69	Inc. $ 1,232,686.05
AVERAGES PER MILE OF ROAD			
Freight-train miles,	1,670	1,619	Inc. 51
Passenger-train miles,	1,077	1,038	Inc. 39
Mixed-train miles,	91	94	Dec. 3
Special-train miles,	5	2	Inc. 3
Transportation service train-miles,	2,843	2,753	Inc. 90
Work-train miles,	73	55	Inc. 18
Locomotive-miles—transportation,	4,040	3,916	Inc. 124
Freight service car-miles,	44,597	41,896	Inc. 2,701
Passenger service car-miles,	6,865	6,050	Inc. 815
Freight revenue,	$ 10,902.07	$ 8,819.87	Inc. $ 2,082.20
Passenger service train revenue,	3,347.97	2,578.69	Inc. 769.28
Operating revenues,	14,799.55	11,796.95	Inc. 3,002.60
" expenses,	11,618.18	9,737.74	Inc. 1,880.44
Net operating revenues,	3,181.36	2,059.21	Inc. 1,122.15
Ton-miles—revenue freight,	802,220	732,470	Inc. 69,750
" —all freight,			

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Empty " " " —freight "		1.62		1.92	Dec. .41
Empty " " " —mixed "		9.34		8.08	Dec. .30
Ton-miles—revenue freight,		1.03		.98	Inc. 1.26
" " —all freight,		455.48		427.67	Inc. .05
Passenger train car-miles—passenger trains,		488.85		451.85	Inc. 27.81
" " " " " —mixed trains,		6.22		5.67	Inc. 37.00
Revenue passenger-miles,		1.70		1.70	Inc. .55
Freight revenue,		74.03		69.67	.....
Passenger service train revenue,	$	6.19	$	5.15	Inc. 4.36
Operating revenues,		2.86		2.28	Inc. $ 1.04
" expenses,		5.21		4.28	Inc. .58
Net operating revenues,		4.09		3.54	Inc. .93
		1.12		.74	Inc. .55
					Inc. .38
AVERAGES PER LOCOMOTIVE-MILE					
Train-miles—freight trains,		.88		.88	.....
Car-miles—freight trains,		23.37		22.51	.....
Train-miles—passenger trains,		.95		.93	Inc. .86
Car-miles—passenger trains,		5.91		5.30	Inc. .02
Train-miles—mixed trains,		.97		.97	Inc. 61
Car-miles—mixed trains,		4.22		4.46	.....
Train-miles—special trains,		.90		.71	Dec. .24
Car-miles—special trains,		7.08		15.03	Inc. .19
					Dec. 7.95
AVERAGES PER LOADED FREIGHT CAR-MILE					
Ton-miles—revenue freight,		29.44		27.01	Inc. 2.43
" " —all freight,		31.60		28.54	Inc. 3.06
Freight revenue,	$	.40014	$	.32529	Inc. $ .07485
AVERAGES PER CAR-MILE—PASSENGER					
Passenger-miles—revenue,		17.60		18.01	Dec. .41
Passenger revenue,	$	.56029	$	.52131	Inc. $ .03898
MISCELLANEOUS AVERAGES					
Miles hauled—revenue freight,		129.90		141.40	Dec. 11.50
" " —non-revenue freight,		108.12		82.91	Inc. 25.21
" " —all freight,		128.14		136.26	Dec. 8.12
Miles carried—revenue passengers,		82.99		78.63	Inc. 4.36
Revenue per ton of freight,	$	1.76538	$	1.70290	Inc. $ .06248
" " ton-mile of freight,		.01359		.01204	Inc. .00155
" " passenger,		2.64179		2.27553	Inc. .36626
" " passenger-mile,		.03183		.02894	Inc. .00289
Operating ratio,	%	78.50	%	82.54	Dec. % 4.04

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REVENUE FREIGHT CARRIED DURING THE YEAR

COMMODITY	Revenue Freight Originating on Own Line		Revenue Freight Received From Connecting Carriers		Total Revenue Freight Carried		Per Cent.
	Number of carloads	Number of tons	Number of carloads	Number of tons	Number of carloads	Number of tons	
PRODUCTS OF AGRICULTURE:							
Wheat	1,384	53,754	1,301	55,201	2,685	108,955	1.60
Corn	845	26,979	1,190	47,197	2,035	74,176	1.09
Oats	111	2,075	243	7,103	354	9,178	.14
Other grain	193	6,604	403	14,679	596	21,283	.31
Flour and meal	550	17,295	373	11,663	923	28,958	.43
Other mill products	472	11,838	224	6,071	696	17,909	.26
Hay, straw and alfalfa	3,297	34,200	1,213	15,326	4,510	49,526	.73
Cotton			473	7,668	473	7,668	.11
Cotton seed and products, except oil	14	282	291	7,693	305	7,975	.12
Citrus fruit	1	11	147	2,597	148	2,608	.04
Other fresh fruits	72	1,039	3.015	46,708	3,087	47,747	.70
Potatoes	350	5,654	3,358	57,073	3,708	62,727	.92
Other fresh vegetables	771	9,435	870	12,292	1,641	21,727	.32
Dried fruits and vegetables	255	6,727	172	4,836	427	11,563	.17
Other products of agriculture	6,511	292,748	276	6,524	6,787	299,272	4.41
Total	14,826	468,641	13,549	302,631	28,375	771,272	11.35
PRODUCTS OF ANIMALS:							
Horses and mules	333	3,770	320	3,704	653	7,474	.11
Cattle and calves	5,366	62,187	5,501	62,570	10,867	124,757	1.84
Sheep and goats	2,412	26,033	3,484	39,014	5,896	65,047	.96
Hogs	347	3,073	37	366	384	3,439	.05
Fresh meats	594	6,909	17	221	611	7,130	.11
Other packing-house products	99	1,345	10	176	109	1,521	.02
Poultry			2	20	2	20	
Eggs	4	37	7	107	11	144	.00
Butter and cheese	27	322	6	86	33	408	.01
Wool	51	564	3	54	54	618	.01
Hides and leather	10	191	6	92	16	283	.00
Other products of animals	44	882	71	1,974	115	2,856	.04
Total	9,287	105,313					

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PRODUCTS OF MINES:							
Bituminous coal,	73,495	3,304,799	10,988	463,688	84,483	3,768,487	55.50
Coke,	1,453	63,301	2,047	77,979	3,500	141,280	2.08
Iron ore,	.....	.....	8,207	481,318	8,207	481,318	7.09
Other ores and concentrates,	2,208	62,641	338	14,047	2,546	76,688	1.13
Base bullion and matte,	3	67	.....	.....	3	67	.....
Clay, gravel, sand and stone,	2,067	90,559	701	33,134	2,768	123,693	1.82
Crude petroleum,	1	12	2,611	83,655	2,612	83,667	1.23
Asphaltum,	2	30	69	2,550	71	2,580	.04
Salt,	26	646	207	5,633	233	6,279	.09
Other products of mines,	32	846	116	4,638	148	5,484	.08
Total,	79,287	3,522,901	25,284	1,166,642	104,571	4,689,543	69.06
PRODUCTS OF FORESTS:							
Logs, posts, poles and cord wood,	687	12,588	891	22,583	1,578	35,171	.52
Ties,	71	1,516	168	4,951	239	6,467	.10
Pulp wood,	.....	.....	1	28	1	28	.....
Lumber, timber, box shooks, staves and headings,	320	5,717	3,899	110,678	4,219	116,395	1.72
Other products of forests,	22	469	30	869	52	1,338	.02
Total,	1,100	20,290	4,989	139,109	6,089	159,399	2.36

REVENUE FREIGHT CARRIED DURING THE YEAR—Continued

COMMODITY	Revenue Freight Originating on Own Line		Revenue Freight Received from Connecting Carriers		Total Revenue Freight Carried		Per Cent.
	Number of carloads	Number of tons	Number of carloads	Number of tons	Number of carloads	Number of tons	
MANUFACTURES AND MISCELLANEOUS:							
Refined petroleum and its products,	180	3,591	6,124	166,790	6,304	170,381	2.51
Vegetable oils,	1	18	136	4,137	137	4,155	.06
Sugar, syrup, glucose and molasses,	1,470	41,723	259	6,437	1,729	48,160	.71
Iron, pig and bloom,			23	947	23	947	.01
Rails and fastenings,	1,331	64,717	1,119	50,741	2,450	115,458	1.70
Bar and sheet iron, structural iron and iron pipe,	170	3,947	1,243	39,000	1,413	42,947	.63
Other metals, pig, bar and sheet,	5	110	40	1,202	45	1,312	.02
Casting machinery and boilers,	257	4,736	178	3,355	435	8,091	.12
Cement,	34	679	1,143	43,851	1,177	44,530	.67
Brisk and artificial stone,	1,946	72,016	294	7,042	2,240	79,058	1.16
Lime and plaster,	565	13,277	180	3,872	745	17,149	.25
Sewer pipe and drain tile,	1,580	19,439	11	362	1,591	19,801	.29
Agricultural implements and vehicles other than automobiles,	219	3,027	342	4,379	561	7,406	.11
Automobiles and auto trucks,	210	1,467	483	3,173	693	4,640	.07
Household goods and second hand furniture,	332	3,525	610	6,569	942	10,094	.15
Furniture (new),	10	71	54	487	64	558	.01
Beverages,	150	2,106	11	168	161	2,274	.03
Ice,	2,010	37,599	26	608	2,036	38,207	.56
Fertilizers (all kinds),	47	1,763	1	29	48	1,792	.03
Paper, printed matter, and books,	4	34	119	3,133	123	3,167	.05
Chemicals and explosives,	1,131	43,860	218	5,487	1,349	49,347	.73
Textiles,	1	15	7	113	8	128	.00
Canned goods (all canned food products),	283	6,626	563	16,617	846	23,243	.34
Other manufactures and miscellaneous,	2,465	62,731	3,369	91,528	5,834	154,259	2.27
Total,	14,401	387,077	16,553	460,027	30,954	847,104	12.48
Grand Total, Carload Traffic,	118,901	4,504,222	69,839	2,176,793	188,740	6,681,015	98.40
Merchandise—All L. C. L. freight,		87,262		21,470		108,732	1.60
Grand Total, C. L., and L. C. L. Traffic,	118,901	4,591,484	69,839	2,198,263	188,740	6,789,747	

249½

[fol. 251] EXHIBIT 13—DOCKET NO. 1572—DATE, 2/3/22

Station Expense, Buena Vista to Romley

January, 1921	$136.76
February	126.24
March	142.02
April	136.76
May	136.76
June	136.76
July	129.06
August	128.33
September	124.28
October	129.06
November	124.28
December	129.06

Section Gang Expense, Buena Vista Br.

January, 1921	681.50
February	504.57
March	490.08
April	486.64
May	482.80
June	812.67
July	846.47
August	678.69
September	511.16
October	520.04
November	504.78
December	494.72

Trainmen Expense, Buena Vista Br.

January, 1921	391.13
February	385.57
March	385.02
April	381.48
May	378.98
June	402.29
July	427.11
August	405.83
September	339.89
October	352.25
November	343.94
December	363.19

Enginemen Expense, Buena Vista Br.

January, 1921	462.08
February	427.41
March	442.68
April	437.77
May	454.93
June	400.04
July	475.18
August	458.17
September	392.42
October	404.80
November	396.46
December	417.14

(Here follow maps, marked side folio pages 252 and 253.)

[fol. 254] EXHIBIT 16—DOCKET 1572—DATE, 2/3/22

The Colorado and Southern Railway Company

Operating Income Statement, Entire System

Operating Revenues

Acct. No.		August 1st, 1920. to August 1st, 1921
101	Freight	$11,627,154.81
102	Passenger	2,862,474.82
106	Mail	175,040.76
107	Express	206,270.80
103	and 108 to 151 inclus. Other operating Revenues	646,685.36
	Total Operating Revenues	$15,517,626.65

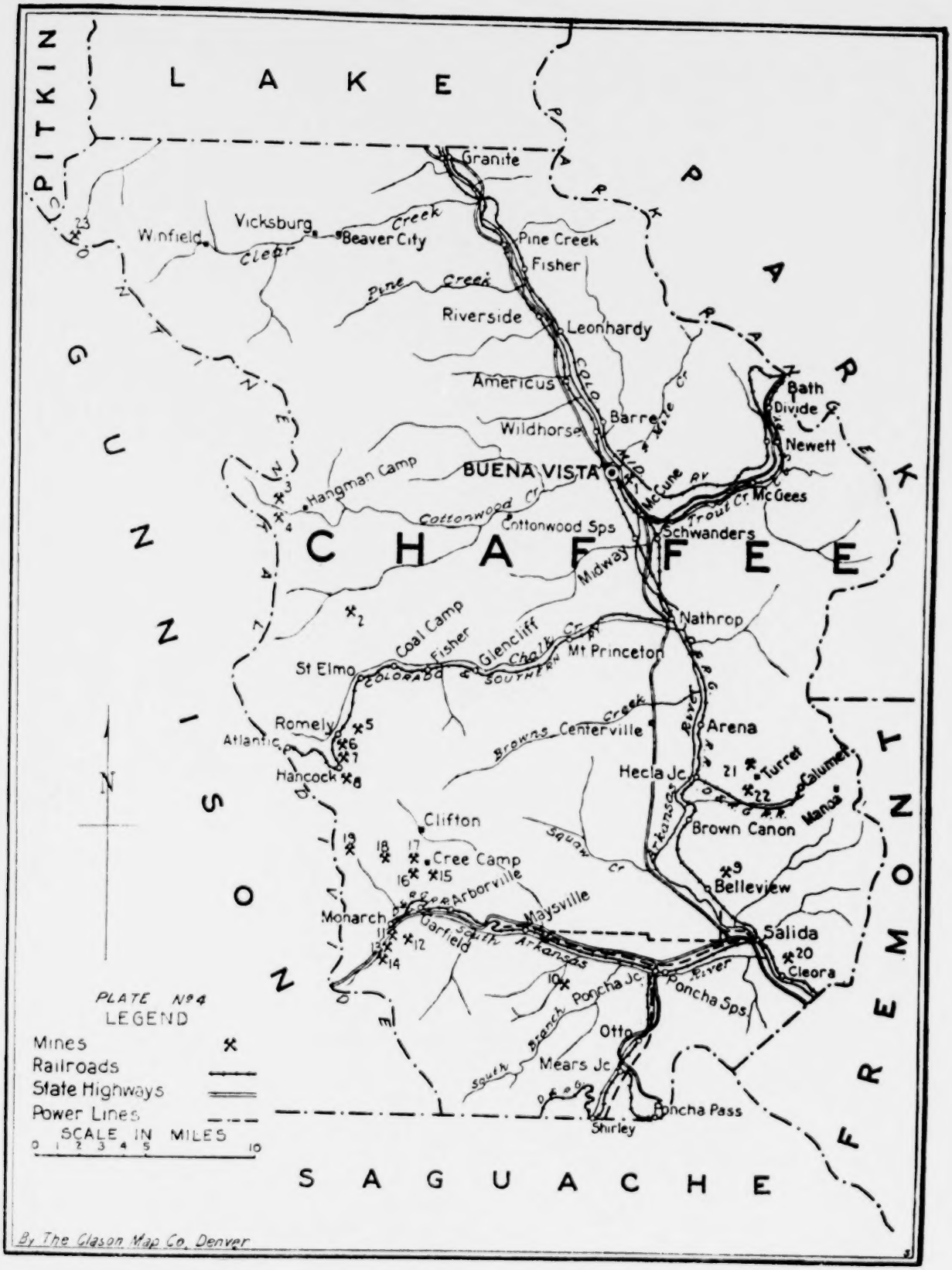
PITKIN
LAKE
PARK
GUNNISON
CHAFFEE
FREMONT
SAGUACHE
Granite
Winfield
Vicksburg
Beaver City
Clear Creek
Pine Creek
Fisher
Riverside
Leonhardy
Americus
Colo.
Wildhorse
Barrett
White
Bath
Divide Cr.
Newett
BUENA VISTA
McCune Br.
Trout Cr.
McGees
Hangman Camp
Cottonwood Cr.
Cottonwood Sps
Schwanders
Midway
Nathrop
Coal Camp
Fisher
Glencliff
Chalk Cr.
Mt Princeton
St Elmo
Colorado & Southern
Romely
Atlantic
Hancock
Browns Creek
Centerville
Arena
Hecla Jc.
Turret
Calumet
Manos
Brown Canon
Clifton
Cree Camp
Arborville
Maysville
Monarch
Garfield
South Arkansas
Squaw Cr.
Belleview
Salida
Cleora
Poncha Jc.
Poncha Sps.
Otto
Mears Jc.
Poncha Pass
Shirley
Arkansas River
N
PLATE No 4
LEGEND
Mines
Railroads
State Highways
Power Lines
SCALE IN MILES
0 1 2 3 4 5 10
By The Glason Map Co. Denver

EXHIBIT 15 DOCKET 1572 DATE 2/3/23

Operating Expenses

I	Maintenance of Way & Structure	2,427,657.27
II	Maintenance of Equipment	3,553,176.13
IIIII	Traffic	153,108.39
IV	Transportation	5,617,005.90
VI	Miscellaneous Operations	124,881.25
VII	General Expenses	675,018.46
VIII	Transportation from investment (Cr.)	10,290.87†
	Total Operating Expenses	12,540,556.53
	Net Operating Revenue	2,977,070.12
	Railway Tax Accruals	990,017.00
	Uncollectible Railway Revenues	1,685.49
	Operating Income	1,985,367.63

[fol. 255] Exhibit 17—Docket 1572—Date, 2/3/22

The Colorado and Southern Railway Company

Statement of Operating Revenues, Operating Expenses, Taxes, and Railway Operating Income on Platte Canon, Leadville, and Gunnison Districts for Calendar Years 1910 to 1920, Inclusive

1910:	
Operating Revenues	$707,236.14
Operating Expenses	887,476.63
Net Operating Revenues	180,240.49*
Taxes	90,636.26
Railway Operating Income	270,876.75*
1911:	
Operating Revenues	373,880.42
Operating Expenses	444,702.59
Net Operating Revenue	70,822.17*
Taxes	82,455.62
Railway Operating Income	153,277.79*
1912:	
Operating Revenues	342,764.01
Operating Expenses	423,512.67
Net Operating Revenue	80,748.66*
Taxes	98,277.07
Railway Operating Income	179,025.73*

[*Red in copy.]
†Denotes Credit.

1913:

Operating Revenues	410,924.62
Operating Expenses	516,333.51
Net Operating Revenues	105,408.89*
Taxes	101,735.89
Railway Operating Income	207,144.78*

1914:

Operating Revenues	379,799.36
Operating Expenses	480,834.72
Net Operating Revenue	101,035.36*
Taxes	110,046.55
Railway Operating Income	211,081.91*

1915 (Fiscal):

Operating Revenues	374,058.84
Operating Expenses	469,433.07
Net Operating Revenue	95,374.23*
Taxes	109,710.11
Railway Operating Income	205,084.34*

1916 (Calendar):

Operating Revenues	453,362.41
Operating Expenses	456,135.77
Net Operating Revenue	2,773.36*
Taxes	123,174.04
Railway Operating Income	125,947.40*

[fol. 256] 1917:

Operating Revenues	554,437.61
Operating Expenses	529,127.79
Net Operating Revenues	25,309.82
Taxes	144,234.66
Railway Operating Income	118,924.84*

1918:

Operating Revenues	489,449.22
Operating Expenses	781,803.18
Net Operating Revenues	292,353.96*
Taxes	138,970.35
Railway Operating Income	431,324.31*

1919:

Operating Revenues	461,558.77
Operating Expenses	930,231.64
Net Operating Revenues	468,672.87*
Taxes	145,591.37
Railway Operating Income	614,264.24*

[fol. 257]

EXHIBIT No. 18—DOCKET 1572—DATE, 2/3/22

The Colorado and Southern Railway Company

Shipments of Ore from Buena Vista-Romley Branch, Years 1916 to 1921, Inclusive

Shipper	1916		1917		1918		1919		1920		1921		Totals	
	No. cars	Tons	No. cars	Tons	No. cars	Tons	No. cars	Tons	No. cars	Tons	No. cars	Tons	No. cars	Tons
Mary Murphy G. M. Co	324	8,100	198	4,940	233	5,822	89	2,181	2	50	..	....	846	21,093
Geo. E. Collins, Trustee	..	....	..	....	..	....	..	....	95	2,375	87	2,175	182	4,550
Colo. Ind. M. & D. Co	1	25	6	150	3	75	1	25	..	....	..	....	11	275
Carbon Leasing Co	..	....	1	25	..	....	..	....	..	....	..	....	1	25
H. Dermitt	1	25	..	....	..	....	..	....	..	....	..	....	1	25
Edson & McDonald	4	100	..	....	..	....	..	....	..	....	..	....	4	100
J. A. Fisher	..	....	..	....	1	10	..	....	..	....	..	....	1	10
Flora Bell Mining Co	2	50	1	25	6	145	5	125	..	....	..	....	14	345
R. J. Grant	..	....	5	125	2	33	..	....	..	....	..	....	7	158
I. J. Haskins	..	....	..	....	1	12	..	....	..	....	..	....	1	12
J. McGuire	1	8	..	....	..	....	..	....	..	....	..	....	1	8
Molly Leasing Co	..	....	..	....	1	25	..	....	..	....	..	....	1	25
Faramount Red. Co	2	50	..	....	..	....	..	....	..	....	..	....	2	50
S. L. Taber	..	....	..	....	..	....	1	20	..	....	..	....	1	20
Totals	335	8,358	211	5,265	247	6,122	96	2,351	97	2,425	87	2,175	1,073	26,696

Office of General Auditor, Denver, Colorado, February 2, 1922.

1920:

Operating Revenues	559,125.65
Operating Expenses	1,072,677.84
Net Operating Revenues	513,552.19*
Taxes	171,434.44
Railway Operating Income	684,986.63*

Office of General Auditor, Denver, Colorado, February 1, 1922.

(Here follows table marked side folio page 257)

[fols. 257½-265] 16. Report and order of the Commission, decided July 28th, 1922.

[Omitted; printed side page 29 ante]

[fol. 266] 17. Application of the Colorado and Southern Railway Company to reopen said case and permit the abandonment of said line, which said application was filed with said Commission on the nineteenth day of May, 1923, and is in the words and figures as follows, to-wit:

[fol. 267] BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1572

In the Matter of the Application of THE COLORADO AND SOUTHERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity, Authorizing the Abandonment of its Buena Vista-Romley Line of Railroad.

Comes now The Colorado and Southern Railway Company, a Colorado railroad corporation, and respectfully renews its application for the issuance by the Interstate Commerce Commission to it of a certificate of public convenience and necessity, pursuant to paragraphs 18-22 inclusive, of Section 1 of the Interstate Commerce Act, authorizing it to abandon the operation of its Buena Vista-Romley Branch, in Chaffee County, Colorado, and in support of this application respectfully shows unto this Commission:

(1) That heretofore, and on September 2nd, 1921, The Colorado and Southern Railway Company, your petitioner, duly filed with this Commission its application under said Act for a certificate of public convenience and necessity, authorizing it to abandon the operation of its certain branch line of railroad, known as its Buena Vista-Romley Branch, all as appears from said petition to which ref-

[*Red in copy.]

erence is hereby made. Thereafter all notices required by law were duly given of the pendency of said proceedings to all the parties interested therein; that thereafter the said application was set for hearing and a hearing was had in Denver, Colorado, before P. F. Gault, an Examiner of this Commission, said hearing taking place in Denver, Colorado, on February 3rd and 4th, 1922; that after said hearing a report thereon was duly filed with this Commissioner by [fol. 268] Examiner H. C. Davis; that subsequent thereto certain exceptions to such report on behalf of the applicant were duly filed with this Commission; that said case was duly set for oral argument before this Commission, and was argued orally and submitted to this Commission on June 15th, 1922; that on July 28th, 1922, this Commission rendered and filed its decision in said cause denying the application of your petitioner, all of which appears by said decision to which reference is hereby made.

(2) That in said decision so filed on July 28th, 1922, this Commission used the following language:

"Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application. It is not in the public interest that even a strong line like the applicant should permanently operate parts of its system that do not yield revenues sufficient to pay operating expenses and interest on the net scrap value of the property. Persons directly interested in the continued operation of the line should co-operate to the fullest extent possible with the management of the road with the view of effecting more favorable operating results. The offer of the applicant to lease the line proposed to be abandoned to protestants at a rental of $5 per year should be given serious consideration by protestants."

(3) That after the filing of said decision, and in accordance with the order of this Commission, your petitioner continued to operate said branch line of railroad, and is now and ever since said decision has been operating the same; that since said decision your petitioner has operated said branch line of railroad for a period of more than nine months; that during said period of nine months there has been no substantial change in the operating results of said branch line of railroad; that said branch line of railroad has each month since the prior application of your petitioner and since said decision shown a heavy deficit in operating expenses; that there has been no increased traffic on or tributary to said line of railroad, and that there has been [fol. 269] no improvement in mining or other traffic conditions along said line or in the region tributary thereto; that there has been no substantial increase in tonnage, inbound or outbound, on said line of railroad, nor has there been since the prior application filed by your petitioner any prospect of an increase in the revenues on said branch line of railroad, nor is there today any prospect of an increase in revenues therefrom.

(4) Your petitioner attaches hereto, Marked Exhibit "A," a true and correct statement of revenues and expenses resulting from the operation of said branch line of railroad for the period from April 1st, 1922, to March 31st, 1923, both inclusive, and prays that said exhibit may be taken as a part of this petition. Your petitioner attaches also Exhibit "B," a statement of the operating results on this branch line for the years 1916 to 1922, both inclusive, and for the first three months of 1923.

(5) Your petitioner further shows to the Commission that the excessive losses incurred on said branch line are a heavy and unwarranted charge upon the revenues of your petitioner derived from the operation of its other lines; that your petitioner has already for several years operated said branch line at a heavy deficit; "that the operating results of this line, which have been filed with this Commission, show conclusively that there is no public necessity for the further operation of said branch line, and that there is no hope of any improvement in conditions on said line."

Wherefore, your petitioner prays that this case may be re-opened, that an order may be entered herein setting the matter for further hearing and for the submission of additional testimony, and after a hearing of which all interested parties may be given notice, your petioner be "permitted to abandon the operation of its line of railroad [fol. 270] known as the Buena Vista-Romley Branch, and take up and move all its property therefrom," and that this Commission issue an order permitting the abandonment of said line of railroad, the cancellation of all tariffs applicable thereto and the removal of all its property used in the operation of said line.

The Colorado and Southern Railway Company, by E. E. Whitted, Its General Solicitor.

STATE OF COLORADO,
City and County of Denver, ss:

Robt. Rice, being first duly sworn, upon his oath deposes and says that he is the Vice President and General Manager of The Colorado and Southern Railway Company; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best knowledge, information and belief of affiant.

(Signed) Robt. Rice.

Subscribed and sworn to before me this 15 day of May, 1923. My commission expires October 18, 1926. (Signed) John F. Brent, Notary Public. (Seal.)

[fol. 271] EXHIBIT "A" TO APPLICATION

The Colorado and Southern Railway Company

Statement of Freight, Passenger, and Miscellaneous Revenues by Months, April 1, 1922, to March 31, 1923, Inclusive, Line Buena Vista to Romley

	Freight	Passenger	Other	Total
April, 1922	$137.84	$40.98	$41.95	$220.77
May, 1922	597.80	60.30	57.20	715.30
June, 1922	191.92	102.72	145.42	440.06
July, 1922	367.71	116.89	154.18	638.78
Aug., 1922	280.14	103.41	148.67	532.22
Sept., 1922	445.15	123.60	157.18	725.93
Oct., 1922	498.82	59.16	158.64	716.62
Nov., 1922	195.04	51.60	149.90	396.54
Dec., 1922	153.98	41.73	173.25	368.96
Jan., 1923	332.32	48.30	153.26	533.88
Feb., 1923	152.29	32.54	151.88	336 71
March, 1923	183.57	41.05	158.74	383.36
	$3,536.58	$822.28	$1,650.27	$6,009.13

[fol. 272] The Colorado and Southern Railway Company

Statement of Operating Expenses of the Line Buena Vista to Romley by Months for the Period of May 1, 1922, to March 31, 1923

April, 1922	2,045.10
May, 1922	2,683.83
June, 1922	2,381.82
July, 1922	2,516.01
Aug., 1922	2,848.84
Sept., 1922	2,484.49
Oct., 1922	2,712.55
Nov., 1922	2,673.03
Dec., 1922	3,062.49
Jan., 1923	3,234.15
Feb., 1923	2,444.45
March, 1923	3,769.43
	32,856.19

(Here follows table marked side folio page 273)

[fol. 273]

EXHIBIT "B" TO APPLICATION

The Colorado and Southern Railway Co.

Comparative Statement of Operation of Buena Vista to Romley Line, Showing Gross and Net Operating Revenue, Years 1916 to 1922, Inclusive, and Three Months 1923

	1916	1917	1918	1919	1920	1921	1922	3 months, 3-31-23	Total
Revenues	$25,507.68	$17,830.53	$13,890.21	$9,983.38	$7,231.79	$6,448.56	$5,813.91	$1,253.95	$87,960.01
Expenses	25,520.55	25,185.04	33,602.75	33.846.32	36,227.35	35,746.96	30,654.28	9,448.03	230,231.28
Net Operating Revenues	12.87*	7,354.51*	19,712.54*	23,862.94*	28,995.56*	29,298.40*	24,840.37*	8,194.08*	142,271.27*
Taxes	14,230.59*	17,903.30	16,250.87	20,017.97	22,730.41	25,256.78	28,838.42	7,209.61	152,437.95
Railway Oper. Income	14,243.46*	25,257.81*	35,963.41*	43,880.91*	51,725.97*	54,555.18*	53,678.79*	15,403.69*	294,709.22*
Interest (P. M. Bonds)	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	6,150.00	178,350.00
Deficit	38,843.46*	49,857.81*	60,563.41*	68,480.91*	76,325.97*	79,155.18*	78,278.79*	21,553.69*	473,059.22*

Accounting Department, Denver, Colorado, May 14, 1923.

[*Red in copy.]

[fol. 274] 18. Order of the Commission dated May 26th, 1923, filed June 12th, 1923, in the words and figures as follows:

INTERSTATE COMMERCE COMMISSION

Order

At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office, in Washington, D. C., on the 26th Day of May, 1923

Finance Docket No. 1572

Abandonment of Branch Line by COLORADO & SOUTHERN RY.

In the Matter of the Application of the Colorado & Southern Railway Company for a Certificate of Public Convenience and Necessity Authorizing It to Abandon a Branch Line of Railroad.

It appearing, That in its report issued July 28, 1922, the Commission said:

"Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application."

It further appearing, That the applicant has filed a petition renewing its application and asking for a further hearing;

It is ordered, That a further hearing be held in this proceeding at a time and place to be hereafter determined.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 275] 19. Copy of transcript of evidence and exhibits taken at a hearing had before the Commission's examiner at Denver, Colorado, on July 13th and 14th, 1923, at which time and place transcript discloses the following proceedings were had:

Examiner Money announced that the case was assigned for further hearing and took the appearances of counsel for the various protestants.

J. H. BRADBURY was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whitted:

My name is J. H. Bradbury; I am the comptroller of the Colorado & Southern Railway and am the ranking accounting officer of that

Company. I am familiar with the accounts of the Company, and have prepared a statement showing the operating revenues, expenses, taxes and railway operating income of what is known as the Buena Vista-Romley branch, including the years 1916 to 1922, both inclusive, and the first five months of 1923. That is a correct statement of the revenues and expenses, the net operating revenue, railway operating income, taxes, interest, and deficit, on that line.

(Statement by Mr. Whitted:) "Now, Mr. Examiner, this is the same statement which we introduced before, except it is brought down to date. This hearing, as you know, was in February, 1922, and all of the operating conditions have been brought down to and including the thirty-first of May, 1923. I would like to have that marked as an Exhibit.

(Thereupon applicant's exhibit No. 1A was offered in evidence.)

The Witness: The basis upon which this statement was made up was explained at the first hearing of this case by Mr. Grenfell. He is the General Auditor, under my supervision. I was not here at the time. All the charts and things of every kind in connection with this statement are kept in accordance with the rules of the Interstate Commerce Commission.

(Thereupon Exhibit 1 A was formerly received in evidence over the objection of protestants, and an exception was saved.)

The Witness: I have before me Exhibit 2 A, which is a statement of the revenues of the Romley to Buena Vista line, for 1916 to 1922, and for the first five months of the year 1923. These revenues are [fol. 276] divided between freight, passenger, mail, express and other revenues. That is a correct statement of what it purports to be. It shows the actual earnings during the years specified on that exhibit.

(Thereupon Exhibit 2 A was offered and received in evidence over the objection of protestants and their exception saved.)

This is the gross revenue shown on this Exhibit 2 A; the gross revenues accruing to the Colorado & Southern Railway on account of the operations of this particular line.

I have before me Exhibit 3 A, which is a statement of the operating expenses and taxes of the Buena Vista Romley line for the years 1916 to 1922, and including the first five months of 1923. That is a true and correct statement of what it purports to be.

(Exhibit 3 A was thereupon offered in evidence and received over the objection of protestants and exception saved.)

(Statement by Mr. Whitted:) Of course, all of these Exhibits are simply brought down to the present date.

The Witness: I have before me Exhibit 4 A, which is a statement of the passengers and revenue accruing to the Buena Vista-Romley line for the calendar years 1916 to 1922, both inclusive, together with the first five months of 1923. That is a true and correct statement of

the number of passengers carried and the revenue accruing during that period. The red figures are a correction in foreign line account for some previous months. It might be possibly for the previous year. Some previous time when an error had occurred in the account, and in the settlement of some subsequent month, the correction had to be made, and unfortunately it threw that particular item into red figures. There were probably no black figures in that month.

(Thereupon Exhibit 4 A was offered and received in evidence over the objection of protestants.)

I have before me Exhibit 5 A, which is a statement of freight, passenger and miscellaneous revenues by months, April 1, 1922, to May 31, 1923, both inclusive. That is a correct statement as shown by the accounts of the railroad company.

(Thereupon Exhibit 5 A was offered in evidence.)

All these figures which I furnish in these exhibits today, are taken from accounts kept in accordance with the rules of the Interstate Commerce Commission, but in some respects amplified beyond the point where the Commission gives classification; but there are no figures used which are contrary to the classification of the Commission. In other words, the Commission does not give us a rule for apportioning certain items between different pieces of track; but all of the figures which I use here are taken directly from the books, and the books are kept in accordance with the classifications of the Interstate Commerce Commission. Exhibit 3 at the original hearing is substantially the same as Exhibit No. 1 A here, and it contains to a large extent the data that are shown on our Exhibits offered now. That is just a repetition of what went in at the previous hearing, except brought down to date. The methods under which these Exhibits were compiled were explained at the first hearing.

[fol. 277] I have before me Exhibit 6 A, which shows the total number of cars, tonnage and revenue by commodities, consignor and consignee of the business on the Buena Vista—Romley branch, for each month of the year 1922. That Exhibit is a true and correct statement of the business transacted on that line, as shown on it. I also have attached to the same exhibit some information covering the months of January, February, March, April and May, 1923. The information contained in that Exhibit is correct, as shown by the books of the Company.

I also have before me Exhibit 7 A, which shows the tonnage handled by the Buena Vista Romley line, classified by principal commodities, for the years 1916 to 1922, inclusive, and the first five months of 1923. This statement separately states the tonnage originating and destined to points on this line, and tonnage interchange with connecting carriers. That is a true and correct statement as indicated by the accounts of the company.

(Thereupon Exhibit 7 A was offered in Evidence.)

I also have a statement marked Exhibit 8 A, which shows the number of passengers handled between Buena Vista and Romley on

Trains 93 and 94, from December 1, 1921, to June 30, 1923. That is a true and correct statement of the number of passengers handled between those dates on those trains. Those are the only trains operated on that branch. Train No. 93 goes in one direction and train No. 94 in the other. I couldn't say as to which one goes from Buena Vista to Romley, or from Romley to Buena Vista. The information is taken from the conductor's train reports which he makes daily.

(Statement by Mr. Whitted:) "Mr. Examiner, prior to the last hearing we submitted certain statements in response to a questionnaire of the Commission. One of those statements was in answer, I believe, to Question No. 8. That question said, 'If the application covers less than the entire mileage operated by the applicant, the gross and net revenues, and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro-rata basis should be submitted.' Now, we have brought that down, like all the other exhibits, to the present time, (referring to Exhibit 9-A). I don't know whether the Commission cares to have that question, as that is not the actual operating results over that line, but it is quite a different statement from the one which we have already submitted, (referring to Exhibit 1-A) which does show the actual operating results.

Exam. Money: Well, this is bringing substantially down to date what is already in the record?

Mr. Whitted: Yes.

Exam. Money: That is sufficient. We will accept it.

Mr. Whitted: This, as you will observe, condenses the gross and net revenues, gross and net income, which is to be allocated on this particular line on a mileage basis. That, I take it, means considering the line as a whole, and allocating earnings on a mileage basis and allocating expenses.

The Witness: That is the way the statement was prepared, as that was our understanding.

Mr. Whitted: Of course, this statement does not indicate the conditions over there, but it is made up on the basis called for by the Commission, and is made up on the theory that the Commission has some theory by which it is useful to them.

Mr. Whitted: Exhibit 9-A is a distribution of the gross and net revenue and the gross and net income on a mileage pro-rate over the whole system of The Colorado and Southern Railway Company in the manner called for by Question No. 8 of the Questionnaire.

The Witness: At the previous hearing there was submitted, on behalfhalf of the applicant, a statement of the operating revenues, operating expenses, taxes and railway operating income on the Platte Canon, Leadville and Gunnison Districts for certain years prior to the years 1921 and 1922. I have prepared an exhibit giving the information for the years 1921 and 1922, and Exhibit 10-A is a correct statement. It shows that the so-called South Park Division, which is all narrow gauge lines, was operated in 1921 at a deficit of $475,226.05; and it was operated in 1922 at a deficit of $479,-

047.80. It is a true and correct statement of the operating conditions of those lines for those years.

I have also a copy of the general balance sheet of the Company. That is marked Exhibit 11 A and is of the date of May 31, 1923.

(Thereupon Exhibit 11 A was offered in evidence.)

[fol. 278] Referring to Exhibit 3 A, the expenses indicated in that statement, maintenance of way and structure, is all actual, with the exception of superintendence which is prorated owing to the fact that the superintendence covers the entire narrow gauge lines, and also on account of the fact that superintendence covers both maintenance of way and structures and transportation. The superintendence is distributed, first, on the basis of fifty per cent. of the superintendence to maintenance of way, and 50% to transportation, and maintenance of way is again sub-divided on a straight mileage prorate—or superintendence is divided on a straight mileage prorate of the jurisdiction of the superintendent. Practically all of that entire sum is actual, because the large proportion of the maintenance of way is in labor and material actually expended on the particular line which we have under discussion, and that is all kept separately on the books and shows definitely here as actual expenses. The first item on this Exhibit 3 A—maintenance of way and structure—includes superintendence. Station service is actual; there is no prorating in that. Enginemen wages is actual. Fuel for locomotives is allocated to this line on the basis of the locomotive mileage of the narrow gauge districts. All fuel issued to narrow gauge locomotives is prorated out to each district on the basis of the locomotive mileage on that district to the total narrow gauge locomotive mileage. As a matter of fact, the railroad company hauls that coal over its lines to Pueblo and ships it over the D. & R. G. to Buena Vista. There is no charge whatever made for hauling the coal over the Company's line to Pueblo; so, as a matter of fact, that amount would represent less than the actual cost of handling the fuel, if you took into consideration the free haul to Pueblo. The trainmen's wages is actual. "Other Train Expenses" are various expenses under transportation, and have to do with operating trains. The total "Other Train Expenses" of the entire line are prorated on a revenue train mileage basis, so that this particular piece of road gets its proportion through a prorate of the total "Other Train Expenses" prorated on a revenue train mileage basis. "Other Train Expenses" all occur under the general account of the interstate Commerce Account of Transportation, and they would commence with other supplies—train supplies and expenses. That is practically all—train supplies and expenses. That item is prorated on a revenue train mile basis. It includes the entire Colorado and Southern Railroad. In other words, we take the entire revenue train miles upon the whole line, and we divide its expenses, and we assign to this branch line its proportion of the revenue train miles in comparison with the line as a whole—we assign to this particular piece of road its proportion of the expenses;—of the total expenses under this account—which are determined by the number of train miles on this district to the total train miles of the

Colorado & Southern Railway Company. Allocating this expense on the basis of passenger car miles would probably show a difference. But it would be a very difficult calculation, owing to the fact that on this particular piece of road we have nothing but mixed trains. It has been the custom, so long as I have been in the railroad accounting business, to make this division on the basis which has been made in this calculation. "Other Train Expenses" on the Colorado and Southern line as a whole amounted to $170,364.01, for 1921. For 1922, $170,156.96. In that year the charge against this particular line amounted to something less than 1% of those expenses. In 1921 it was $170,000.00 for the whole line. And the portion for this [fol. 279] line is $1,327.00; and that would make substantially less than 1%.

"Other Transportation Expenses" are divided on exactly the same basis as "Other Train Expenses" for the entire line, prorated out on a revenue train mile basis. It would take some little calculation to give the total "Other Transportation Expenses" of the line as a whole, because it includes a great many accounts. It is all divided up into various accounts there; I don't have that.

Locomotive repairs are of two distinct natures, one, general and heavy repairs, and the other, running or minor repairs. The general or heavy repairs are divided on the individual locomotive mileage, that is, to each locomotive that requires heavy repairs to its mileage over the various districts of the railroad since the last general repairs were made to that locomotive. The minor repairs are divided on the basis of the locomotive mileage of the entire road as against the locomotive mileage of the district involved.

Freight car repairs and passenger car repairs are not disposed of on the same basis. Freight car repairs are all divided on the freight car mileage of the narrow gauge district. In other words, we know what our narrow gauge freight car repairs are, and we divide the freight car repairs to any particular district on the basis of the freight car mileage of the narrow gauge line as to the freight car mileage of the particular district involved. Passenger cars are handled in exactly the same manner as the freight cars.

"Equipment expenses" are prorated on the basis of the revenue train miles of the entire line to the revenue train miles of the particular district.

The entire traffic expenses are prorated on the basis of the revenue train mile. For the year 1921, traffic expenses for the whole line were $146,129.21; so that the traffic expenses of 1921 allocated to this particular branch are less than one-half of one per cent.

General Expenses is handled in the same manner, prorated on the basis of revenue train miles. The general expenses for 1921 were $603,157.23. The per cent. of that sum allocated to this line would be less than a third of one per cent.

From the exhibits which have been put in evidence, particularly the figures which apply to the operation of this line since the last hearing, it is shown that there has been a continued decline in the operating revenues since that time.

(Exhibits numbers 3 A to 11 A were thereupon offered and admitted in evidence.)

[fol. 280] (Mr. Whitted to the witness:) "Will you kindly explain how those taxes are calculated?

Exam. Money: Are they calculated the same as the report shows?

Mr. Whatley: Yes. It was testified to by one of the Tax Commission at that time.

Mr. Whitted: My understanding of the situation is this: We have at the present time in that county about thirty miles of operated railroad. I think that is practically the amount of the rails and ties that we have laid. The taxes assessed in that county amount to something like $25,000 to $30,000.

Exam. Money: Do you pay them?

Mr. Whitted: We do. There has been no effort on the part of these gentlemen who are protesting against the abandoning of this railroad, to assist in any way in having those taxes reduced. That condition of affairs has continued for years. Now, at one time we did have some other mileage there, but at the present time the Buena Vista-Romley line, approximating around thirty miles, is the only mileage that we have over there, and our taxes in that county amount to that sum. It ought to be stated that in the State of Colorado the State Tax Commission arrives at what it considers the railroad property in the State, and then it prorates it out to the county on the main line mileage basis. That results in distributing to this county the value upon which these taxes are assessed.

Exam. Money: Then the main line may be worth a hundred thousand dollars a mile and the other twenty thousand; is that it?

Mr. Whitted: That is it. They divide it by the main line mileage.

Exam. Money: Does the road own the right of way?

Mr. Whitted: Oh, yes. That is, where the track is operated, you mean?

Exam. Money: Yes.

Mr. Whitted: Oh, we own the main line from Buena Vista to Romley. It runs up a mountain canon——

Exam. Money: Do you own the land upon which this road runs?

Mr. Whitted: I think we do. I never heard it questioned. We have had the possession of the property for a great many years. Now, in a general way, that is the way the taxes are handled. I think I am correct in that, am I not, Mr. Whatley?

Mr. Whatley: Yes, generally speaking. Of course, the Commission found at its former hearing that it was doubtful if the taxes were reduced any by the abandonment of the line.

Mr. Whitted: Well, Mr. Examiner, it seems at once, then, that the State Tax Commission will not do its duty. He says that we won't make anything by abandoning this line because they will keep the taxes where they are and distribute them over the rest of the line, in spite of the fact that by abandoning this line we reduce our property account. I do not think the Commission can proceed on the theory that the State Tax Commission is going to ignore the law and assess just as much taxes against the railroad company after it destroys a part of its property. That is what that argument assumes.

[fol. 281] Mr. Whaley: Here is what the Commission itself said in the former hearing: It is doubtful whether you can expect any deduction by the abandonment of this line. The Commission says: "This testimony leaves in doubt the question as to how much, if at all, applicant's tax payments would be reduced by the abandonment of this branch."

Mr. Whitted: I take it that it must be assumed that when a part of a railroad is taken up and removed, it will have some effect on the property in the State for the purpose of taxes.

Mr. Whatley: Yes, if they abandon a great part of this system it will at least have some effect.

Mr. Whitted: We cannot assume that the Commission is going to ignore the law.

Cross-examination.

By Mr. Whatley:

These exhibits show what saving the company would effect by closing down this line. I think that it could safely be stated that they would approximately save the entire deficit as shown under the total of railway operating income. That appears on exhibit 1-A as the fifth item in red. That red figure indicates a loss. I contend that the amount of taxes would be reduced on account of this line. [fol. 282] I also contend that some of the overhead expenses which have been allocated to this line as shown in line two of Exhibit 1 A, will be reduced. The cost of superintendence to the company would be reduced to the extent, in my opinion, of the relief which would be given to the superintendent and his forces of overseeing and superintending this piece of railroad. That would probably be a saving in dollars and cents to the company. I couldn't say as to whether the superintendent's salary would be reduced but he would have some additional time to spend for the company on other business. He is not under my jurisdiction; I couldn't answer the question whether he has time now to go over all the South Park System. I figure the company would save these taxes exactly the same way that Mr. Whitted has described. It is hardly necessary for me to repeat his argument, but I cannot imagine that a State Taxing body will tax the railroad on property which it does not possess. I don't understand that the State Taxing body takes into account the net earnings of the company, among other things, in determining its valuation. The matter of taxes does not come peculiarly under my jurisdiction; simply as to the accounting; simply as entering the amounts on the books, but as to figuring out the details of the taxation and the allocation of it to the various counties, and items of that kind, that does not come under my jurisdiction. I do not profess to be entirely familiar with the State Taxing Law.

I think that by the abandonment of this line we would make a saving on the item of superintendence and other allocated items included in the maintenance of way and structures account. "Other train expenses" are allocated on the basis of the entire train expense for the Colorado and Southern System. That allocation does not in-

clude any overhead; these are actual. General office expense has been gone into under the item—title of "General." All general overhead expenses are included under the title "General," except our general traffic department which is under the title of "Traffic." All other general expenses are included in the classification of the Interstate Commerce Commission. I figure there will be a saving to the company on the general expenses. You save on any supervision, or work of any kind, where you cut off a portion of the work. General officials would probably receive the same salary. The larger portion of this expense comes under the expenses of clerks, and it is very probable that there would be some reduction in the general account. I have made no separate computation as to the amount, other than that it is my belief that the amount stated in this exhibit would be saved.

Fuel is hauled to Pueblo and then turned over to the D. & R. G. Railroad for transportation to Buena Vista. We purchase all of our coal that is used on this line in the Southern Colorado coal fields. I couldn't say why that is or whether we have a special contract. I don't purchase the coal, so I don't know why the coal is purchased one place rather than another. I have heard that there are coal mines in Canon City and other places closer by. We had a line that went into the mines at Baldwin; that was a continuation of this same line. At that time we got our coal for this line from the Baldwin coal fields. It costs a great deal to haul the coal. We did not include in these figures any cost of transporting coal, but the cost is there. We include just the cost of hauling it from Pueblo to Buena Vista, because that is a direct charge. The cost of hauling the coal over our own line is in the cost of transportation, you understand, somewhere, so it might not be included against the item of fuel, but there is a certain cost there that is divided among all the transportation accounts. No portion of that cost is allocated to this Buena [fol. 283] Vista-Romley line; it is allocated to the line over which the coal passes.

Abondonment of the operations of the portion of this line from Hancock west to Baldwin and Gunnison occurred November first, 1910, and at the same time the line fron McCune to Garos was abandoned—the operation was abandoned. I don't know of any contract nor of the existense of any contract for the abandonment of that line. It is not true that I testified to the existence of such a contract in the former hearing, in this case or any other Colorado & Southern case; not to my knowledge. I don't know of any contract or of any such agreement or arrangement.

Exhibit 6A is the record of all freight shipments.

I am familiar with the original purchase of this Denver, Leadville, Gunnison line merely from reading the history. I was not with the Company at that time. I am not able to describe the terminal facilities here in Denver that were acquired by the Colorado and Southern through the purchase of this line. There were some terminal facilities, I understand, that were acquired in the purchase of the Denver Leadville and Gunnison road. This line from Buena Vista to Romley was a portion of it at that time. I couldn't say whether the com-

pany still owns all of those terminals, because, as I said, I am not sufficiently familiar to be able to describe what terminals were purchased. They still own some of them. Those are terminals located here in Denver. We are not stating here, as I recollect, any cost figures in any of these statements—merely operating results; these are only operating figures. I presume those terminals which the company still owns here in Denver are of considerable value. I am not stating any property accounts here, and I could not make the statement of a credit without the property account. Our company at that time did acquire the value of the terminal facilities here in Denver which they still own. I am not prepared to state from memory just what those terminals are, or where they are located. I would be able to get that information for you and will do so and present it at a later hearing.

(The Transcript discloses that at this point there was considerable discussion between the Examiner and the attorneys with reference to the relevancy of testimony concerning the terminal facilities in the City of Denver acquired by the railway company at the time it purchased the line of railroad of which the line here in question formed a part and that thereupon the following proceedings were had:)

Mr. Whatley: We offer to show by this witness on cross examination the fact that this company did acquire at the time of the purchase of this branch line large values in terminal facilities located in the City of Denver, really now a part of that system, and ought to be considered. The Company takes the profitable part of the purchase and tries to get away from the unprofitable, leaving the people up there without service.

Exam. Money: Would it be your position that if some portion of a system were profitable and some other portion unprofitable and even being operated at a loss, that the unprofitable or loss-producing part, could not be abandoned? I take it that would be your theory.

Mr. Whatley: That would be my theory based on the North Carolina Corporation Commission case.

Exam. Money: Have you any further questions of this witness?

[fol. 284] Mr. Whatley: Yes, but we want to make the further showing here that the Colorado and Southern Railway Company is now getting the benefit of these terminals that it acquired at the time it acquired this line in question. However, the objection has been made, and it is sustained?

Exam. Money: Yes. You have requested the information, and it is objected to and the objection sustained. You may have your exception.

Thereupon the witness was further examined as follows:

By Mr. Whatley:

Exhibit 11-A shows disposition of these revenues only in so far as the corporate surplus is concerned. The balance sheet—all revenues and expenses, income items, are closed into corporate surplus at the end of the year. The company has been able at all times to pay

the interest on its bonded debts. It has paid dividends on its common and preferred stock. I cannot tell you from memory what dividends it has paid. They started back in 1900. They have not been paid regularly. In this year, 1923, they have paid 2% on the first preferred stock. They have not paid any on the common. In 1922 there was 4% paid on the first preferred stock, 4% on the second preferred stock, and 3% on the common. We have no other stock issued. The interest is paid on bonded indebtedness as it became due. The company has not during all the past several years been able to pay dividends on both its common and preferred stock. As I say, I am not prepared to say in what years it has failed to pay, because it covers such a long period of years that I cannot remember. My recollection is that we did pay the same dividend in 1921 that we did in 1922, but I am not sure that we did. We did pay the dividends on preferred stock, I know—4% on the first preferred and 4% on the second preferred.

The Item shown on Exhibit 11-A as investment in road, is simply the book investment as shown by the books. Practically all of that was paid by the stocks and bonds of the company issued at par. The investment in equipment, book figures, are practically all cash. The whole equipment that came from the old company in 1899 are included in the stock and bond issue at that time, which was a very small portion. I am not sufficiently familiar with the purchase of the Denver, Leadville and Gunnison Railroad Company to state whether it was paid by the issuance of our securities, but my recollection is, from reading the history of the road, that it was purchased in cash. I have listed here as a portion of our assets, "Investments in Affiliated Companies." That includes the Denver City and Fort Worth Railroad and other Colorado lines. The Denver and Interurban Railroad. The Witchita Valley Lines, consisting of five companies in the State of Texas. Those are all associated lines. They have different management, but practically the same control. They are not all operated as one system, they are operated separately under the State Laws where they are organized. The Colorado and Southern Railway Company is a separately operated enterprise; the others are not under the same management, but they are under the same control. I couldn't say as to whether the Colorado and Southern Railway Company is under the same control as the Chicago Burlington and Quincy Railroad. Both companies have the same President. To that extent they are under the same control. The control of the capital stock of the Colorado and Southern rests in the Chicago Burlington and Quincy—that is, the majority of the stock. Profit and Loss balance on December 31, 1922, when we closed our annual accounts, was $3,891,024.83. The income balance which is credited to profit and loss, for the first five months—January to May, inclusive—of 1923, is a debit account; in other words, in the first five [fol. 285] months of 1923, the Colorado and Southern lost $386,711.70, which, to ascertain the correct profit and loss balance on May 31, 1923, should be deducted from the profit and loss balance of December 31, 1923. That deficit took place at that time because the expense of operation is so much larger in proportion than the rev-

enues. The cost of operating to the Colorado and Southern Railway for the first five months—the ratio of expense to revenue has been over 95%, leaving very little for any other charges. The operating ratio in the first five months is larger than the remaining months of the year. I would say that is due partly to the climatic conditions, but more on account of the fact that the revenue is so much lower in the first six months of the year than it is in the second six months. As I told the Examiner, our operating expenses were 95%, which would leave about 5% of the revenue with which to pay taxes, interest and other items, which was insufficient to meet our requirements. It frequently happened that in the first five months of the year our operating conditions are not up to what they are during the other seven months, but this is the first time in my experience with the road, in 23 years, that it has ever been this way. The 24th Annual Report of the Board of Directors was prepared under my supervision. I am familiar only in a general way with the statement found on page 7 with reference to the explanation for the falling off in revenue which states: "Metal mining in Colorado and operation of the steel plants there, were also on a low schedule throughout the year." I did not make the statement, that is the President's report. The statement is correct so far as I know. I couldn't tell you whether it applies to the metal mining served by the Buena Vista Romley Branch; I haven't looked into that feature of it.

In making my allocation of expenses to this line on a train mile basis, that does not exactly mean that the train running over this line carries its prorata of expenses for the same number of miles as a train out on the standard gauge line. Approximately, that is correct. We allocate certain primary expenses which cannot be definitely allocated to any particular portion of the line, which are generally of the character of superintendence, or matters of that kind. We have to find some basis of unit of measurement, and it has been the practice for many years on railroads to work out their train expenses on train mileage—that is, the revenue train mileage. Where they can allocate an item of expense to the locomotive, or where they can allocate it to a freight train car, they allocate it to the freight train car mile. That has been accepted by the Interstate Commerce Commission and by railroads in general for many years as the best unit of measurement. There is no necessity on this line which has combination freight and passenger service to segregate our passenger train mile and our freight train mile for the purpose of allocation, because the only expenses that we allocate here by a train mile basis, we use the train mile, and not the freight train mile or the passenger train mile, but the train mile as a whole. So that for the purpose of allocation, a train running from Buena Vista to Romley, and carrying one car, would get the same pro rata as a train going from Pueblo to Denver and carrying fifteen cars; and the result, so far as I am able to judge from looking at these figures, is to give the branch from Buena Vista to Romley a much smaller proportion of the expense than it would be justly entitled to if we could justly allocate the expense to it, because they have two trains only, and the other portions of the line have a great many trains running

every day. I mean that the train on this line has two numbers. It is called two trains. It is listed on the time card as two trains.

I merely see that the wages of the train crew are paid, but as to fixing them, I have nothing to do with it. I do not make the schedules.

[fol. 286] Exhibit 9-A takes the gross and net revenue and gross and net income for the entire Colorado and Southern System, and then allocates to this line on the mileage pro rata basis. The difference between Exhibit 1-A and Exhibit 9-A is that Exhibit 1-A goes into the details you have just been describing, and was prepared in our office to determine as near as we possibly could the actual revenue and the actual expenses belonging to this line; whereas, Exhibit 9-A is merely an answer to a Questionnaire—Question number 8—submitted by the Commission which said, "Divide all that you have on a straight mileage pro rate without regard to what the actual figures are;" and this is merely an answer to Question number 8 of the Questiannaire. This is not an allocation, but a pro rate. It is a pro rate of the entire business of the Colorado and Southern Railway Company, and does not represent, or purport to represent, any actual figures except as they may be affected in this total, except as it is apportioned to this line on the basis of the Questionnaire submitted by the Commission, that should be divided on a straight mileage basis.

The Interstate Commerce Commission has not completed the valuation of the property of the Colorado and Southern Railway, and there are no figures in these Exhibits showing the value of the Company's property located within the State of Colorado. The interstate Commerce Commission has not completed the valuation of any particular line.

(Thereupon Applicant's Exhibit No. 12-A was offered in evidence and duly received over the objection of protestants, and exception saved.)

W. P. Hayden was thereupon called as a witness and, having been duly sworn, testified as follows:

Cross-examination.

By Mr. Whatley:

I do not know anything about a man by the name of Turner going up to Romley, St. Elmo or some other little town soon after the decision of the Interstate Commerce Commission in this case last year, and giving out the information that a contract had been given for tearing up all the tracks west of Romley and moving the rails. I am not familiar with a contract with the Herr-Rubicam Company. I do not handle that. I do not know whether any such arrangement was made or not. I have no information whatever with reference to it. I have not been over this line since the last hearing. If there had been any building or other construction work on this line since

that time I would have known of it, but I know of none. I do not know that there have been at least twenty new houses built along this line above Mt. Princeton since the last hearing. I mean by that answer that I don't know about these houses. I don't know of any development work that has been carried on by the mining companies up there since the last hearing. I do not know that the Rarus-Warrior, for instance, has installed its machinery and finished its building since that hearing. I have no knowledge of that. I have no knowledge as to the conditions that have taken place. I haven't heard of any granite being quarried out by the Colorado Wholesale Granite Company on this line. I do not know that it is a fact that they have some 12 or 15 car loads up there now ready to ship. I [fol. 287] have no knowledge of that. I have not been over this line since the last hearing and I have no information as to the development work going on since that time.

Exam. Money: Before you start with your witness (addressing Mr. Whatley) I want to ask Mr. Whitted a question: Mr. Whitted, have any efforts been made, or if they have, would you know, towards the purchase of this road by any of the interests served by it, since the last hearing?

Mr. Whitted: I think we would know. There has been no effort to purchase it or to accept the offer which was made in this original proceeding. That offer stands good yet.

Exam. Money: As recited in the report?

Mr. Whitted: As recited in the report.

Exam. Money: Either for purchase or for rent?

Mr. Whitted: To be purchased for scrap value, or rent it at as nominal a figure as $5 a year, I think, provided they would operate it and operate it in its present condition.

Testimony of Protestants

George E. Collins was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

I am the same George E. Collins who testified at the former hearing of this case. I stated at that time that I was a mining engineer and in touch with the mining conditions generally in this state. At the former hearing in this case, I made some mention of a development which was then nearing perfection and completion in the metallurgical development and treatment of ores. At that time I did not refer to the name of the development or the treatment, for the reason that it was not at that time a matter of public knowledge. There have been many important improvements in metallurgical treatment worked out during the last few years. The one that I had

special reference to when I testified at the former hearing is what is now called the Coolbaugh Process. That is a method for the treatment of complex sulphide ores by roasting in the presence of a current of pre-heated air which flows through any standard roasting furnace in the same direction as the ore. Under that condition, when there is over 5% of pyrite present in the ore, to act as a catalyst, the zinc and copper sulphides in the ore, and also the lead sulphide, are transformed into sulphates. Of those sulphates, the zinc sulphate and copper sulphate are all soluble in water. The lead sulphate form is insoluble. By agitating the roasted material with water, the zinc and copper sulphates go readily into solution and are readily precipitated as saleable property. The lead sulphate stays behind in the residue with the gold and the silver and the iron. Such material, when baked together with heat barely enough to melt it, to make it into a mass, or brocaded, it forms an ideal smelting material, of a nature which is needed urgently in the regular business of accustomed smelting as operated in this state. The main difference between that and former standard methods is based on the accidental discovery that by applying the air when roasting in that way with the ore, instead of opposite to it, you get nearly all of the sulphides transformed into sulphates, and all of us in the metallurgical business were too blind to have noticed that very simple fact for years before that. An arrangement has been made between the mining interests which control the Coolbaugh patents, and which patents had not been issued when I gave my testimony here before—between those interests and the American Smelting and Refining Company, which controls the smelting business in this and adjoining states, by which a testing plant is to be built with a capacity of forty tons daily of concentrates—the equivalent of between 200 and 400 tons daily of crude ore—to build a plant to operate this process in connection with the Durango Smelter of the A. S. & R. That plant has just gone into use, and bids fair to be entirely successful. The treatment provided by that process means this: That you have the cost of smelting to be borne by only a part of the ore, instead of by the whole tonnage of the ore, and the zinc, instead of being a source of damage, becomes a source of revenue; and the whole process is so simple and so cheaply operated that in the opinion, I think, of nearly all en- [fol. 288] gineers who are competent to judge, it will eventually revolutionize the treatment of that type of ore—the complex ores containing the sulphides. Under the present conditions, we are penalized if we have a complex ore that contains zinc. Under the new process we are not penalized for the zinc, but on the contrary we will get paid for it. At the present time if we ship complex ores to the zinc smelters and it contains more than a small amount of lead, we are pealized for the lead. The percentage varies with individual contract. With the complexities of that business, it would take days to talk about such contracts.

(Thereupon the witness was temporarily excused for the purpose of calling another witness).

HOWARD H. FIELDS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is Howard H. Fields, I am an engineer connected with the American Smelting and Refining Company. Having installed the Coolbaugh process, I am familiar with it. The Coolbaugh process is finally and entirely designed for the preparation of the complex ores of this state for treatment in existing lead furnaces by the extraction of the zinc, which is the rebellious element. That is to say that the zinc contained in the ores, unless extracted, becomes a liability and a burden upon the other values in the ore. The presence of zinc up to 30%, up to the present time, has been a rebellious elemnet. It makes an infusible smelting mixture and takes the values into the slag. Over 30% it pays to take the zinc out by the existing processes, and the present Coolbaugh process is for the treatment of ores and concentrates showing less than 30% zinc. I would like to explain that 30% is not a fixed figure; it is an approximation. As we see it now, we have a plant which is handling some 60 tons a day at Durango. The plant is not operating as it should yet, but we are very much enthused over the possibilities of it at this stage that it is a success, and is going to do what we felt it would. Assuming that it does do that, its effect is going to be in two ways: Its first effect is that it is going to make available these zinc ores that you cannot smelt except at a prohibitive rate; and if you want to draw on your imagination and hopes, it is going to permit, perhaps, some payment for that zinc. It is assured that at least it is going to do away with the penalties that are now attached to production. It will remove the penalty from the zinc, and zinc is in many of these complex ores in considerable volume. The reason we are not absolutely assured of the final success of this process in Durango is that we have to build up a certain tonnage of leached ores in the settling tanks, which are large tanks that hold a considerable tonnage of ore, up to 500 tons, and the maximum tonnage that has to be placed in these tanks has not been reached yet, so that we have taken nothing out. Within 30 to 60 days—at a maximum of 60—I think that we will know definitely the whole story. So far as we can see or judge at the present time, from the work which we have done, we are prepared to say that it is a demonstrated success in the treatment of ores. That process is being now practiced in this state. We have [fol. 289] now a full sized unit. The Coolbaugh process will be built in units as the business demonstrates the necessity for it. The working tests of the process thus far carried on, are successful and satisfactory. I think that the Coolbaugh process, in connection with the existing smelting methods or treatment, will create a market for complex ores which has not heretofore existed, if it is fully demonstrated as a successful process; and as an example of just how the smelting company feels about it, we are undertaking, in connection with the Iron and Silver Mining Company in Leadville, the un-

watering of a large section in Leadville under the name of the Leadville Deep Mines Company, and we have, with the Iron and Silver Mining Company, put half a million dollars into it, and the major portion of that ore is ore that will be amenable to treatment by that process. Our mining department is convinced of its success, and have been willing to go that strong. I think this process is like throwing a rope to a drowning man. Right here I want to say that a great many of the men engaged in the metal mining business in the State of Colorado look at it that way, and a great many of them feel that this process will put values in the ore. We will be able to treat the ore more economically; it is a great improvement. A considerable portion of that economy will extend to the mine operators. You realize that there is considerable dispute as to what belong- to them and what belongs to us. I cannot say any more with reference to the installation of a Coolbaugh process unit in connection with the Leadville smelter than I have said, that our mining department has gone to this expense in un-watering this particular section. In other words, the matter of actually making that investment would not be up to me but up to the company. This money that I speak of as having been invested is in the Leadville District. You appreciate my position; I cannot commit the company to any such statement because the success of the process has not been fully demonstrated. I do not know whether they will invest money in the process at Leadville, but they are willing to put in half of that money to open up ore for the process. Beyond that I do not know what their plans contemplate. It is too far ahead. The ore in this un-watering proposition at Leadville is pretty well established—the presence of that ore—and it is a complex ore and it is not ore that could be handled under the present conditions with any substantial profit.

Cross-examination.

By Mr. Whitted:

There were three men connected with devising this process, which goes under the name of the Coolbaugh process—Messrs. Coolbaugh, Fisher and Reed. Our first connection with it was about a year ago, at which time they had finished a fairly large testing furnace here in Denver, and made a run under the supervision of our engineers. I am not certain whether it was mentioned prior to that. We did not start any construction work until the fall of 1922. I am trying to remember when the smelting company became connected with it. It is about a year ago. We built a plant down at Durango, which is owned by a combination of Mr. Bulkley Wells, the Smelting Company, and the original inventors. It was designed to treat 40 tons of concentrates from the Black Bear mine a day. It is treating 60. That means 250 to 300 tons of crude ore originally. They expended on that a little over $300,000. That is the only plant of its kind in the State and that is about three hundred miles from this mine. Construction work was started in the fall. I do not believe [fol. 290] that we got any steel for that unit until November or

December last year. It is actually less than a year, but from the time the original plans were concluded, it was about a year. It is about a year from the time we started the plans. I believe we could construct a like plant in less time, because we know many of the pitfalls to be avoided—I would say it would take about a year. We have no plans drawn up for the construction of any other plants. All the ore that this plant at Durango is designed for comes from Telluride. That ore contains gold, silver, lead, zinc and copper. Half an ounce gold; fifteen ounces silver; twelve per cent lead; twenty-five per cent zinc. That is concentrates. The value of those ores is in the gold and silver, and in the copper. There is about four per cent copper. The chief values are not in the gold and silver. It is hoped the zinc will be of value. Zinc is selling at the present time at about six cents a pound. 25 per cent zinc is 500 pounds. Now, that zinc delivered in St. Louis is worth $30.00. The chief value is in the gold, silver, lead and copper, in that particular ore. I said that this process could not give value to an ore that did not have value. I know something about the character of the ores from the Mary Murphy Mine. Before telling you what the crude ores average in gold, may I tell you that the crude ores at the Mary Murphy mine that are being shipped out are not the only ones that are to be treated by this process, and I do not believe that the crude ores are amenable to treatment by it. By that I mean that the crude ores as they stand, as we have evidence of them in our ore shipments for the last two or three years are not the type of ore that this process is designed for. These ores will have to be concentrated, or a different style of mining practiced. The men who are mining there at the present time are endeavoring to stay away from the zinc as much as possible. They have cut it down as low as they can because it is penalized. This process is not of any value to ores of the character which this mine has been shipping to the smelter company for the last two or three years, because they have been staying away from the ores that it would be of value to. You have got to have a very large content of zinc to make this process of any value. This process is of no value to the character of ores that have been shipped in the last two or three years, but the character of the ores does indicate that they are endeavoring to stay away from zinc, and if they try to keep the zinc in it, it will approximate the grade of ore that can be treated. The proposition, whether the Coolbaugh process is of any value to this property depends upon whether you can get in there and pick out some highgrade zinc ores, it being admitted that for the last two or three years none of this ore has been shipped to the smelter; but the Mary Murphy Mine has a mill, you know. I couldn't say whether that mill has been in operation. At that mill they reduced the crude ores to the concentrates, and the concentrates are shipped to the smelter. The only reason that the Mary Murphy Mill has not been able to operate is that when they made the concentrates, they could not make a clean concentrate, which could be marketed as such. This process at the Black Bear Mine is what might be expected at other mines. They take the crude ore that goes into the mill and make a very clean concentrate, which entails no

difficulty. They make a clean tailing, which is termed a middling product, and is the product that is desirable for this Coolbaugh process, and for that reason, I believe that it is quite possible that operations at the Mary Murphy Mine will work out in a very similar way to those at the Black Bear. It is not necessary to make any substantial change in the mining machinery at the mill in order to convert the mill so that they can avail themselves of this Coolbaugh process. It is just the question of very slight changes in the handling of it in the various mill machinery. That could ordinarily be done in the course of three months. This is based on the assumption that [fol. 291] you have a mill to start with, of course. I don't know whether the mill at the Mary Murphy Mine could be converted in three months. I am not familiar with that mill. This is a mill for the purpose of concentrating ores. In an ordinary mill the ratio of concentration varies so that you cannot say. Some mills will concentrate two to one, and some twenty to one. It is not certain yet that this process will be a success; We have to meet certain mechanical difficulties which may have to be overcome. We are not prepared to state yet and issue to the world a statement that it is a success. I am familiar with the Durango ores. They run about a half an ounce per ton of concentrates in gold. That would be about $10.00 value. The Black Bear concentrates run about 15 ounces in silver to the ton. That would be approximately a value of $9.00. Since the first hearing silver has dropped from a dollar an ounce to about sixty-three cents an ounce. Silver values in these ores has shrunk at least 33 1/3 per cent. We expect to have twenty-five per cent. zinc, but the average of the material we have received so far is in the neighborhood of twenty-two per cent. It is so far successful in that percentage of zinc. I am entirely familiar with the ores we are treating at Durango, and I am familiar with the Mary Murphy ores that we have received at Leadville, but they are not in proper shape for treatment by this process, because they do not contain a high enough percentage of zinc. "Insoluble" is a term that designates material that forms on a filter in the analysis of the ore, which is practically insoluble. It contains principally silica and quartz. There are some other elements that stay with it. The insoluble content ranging from 40 to 75% as shown on the smelter company invoices of the Mary Murphy ore is practically all silica. Those figures do not contain any zinc. I know about the value of this ore in zinc only from the zinc content of the ores that we have received, which manifestly have as little zinc in them as they can possibly produce. Some of the ore shipped from the Mary Murphy has run as low as 2% and 3% zinc. I don't remember any 1% zinc. I think that your statement that they have got to have a different ore than that which they have shipped before, does not cover the situation, because they did ship a great deal of zinc when they operated their mill, but there is a great deal of ore that we have received from the Mary Murphy Mine which would be rebellious, and that is the case in any mine—they will have material that a mill designed for them does not treat. The smelter company owns a large amount of ore in Leadville. As to whether

we would take care of our own ores first I can only answer by saying that we are producing ores today in Leadville, and we do not give them preference over anybody else. There is never any preference shown. They all look alike to the man that runs the smelter. We have but two smelters operating in Colorado—one at Durango and one at Leadville. We are in the business to smelt ores, if we can, at a profit, and as much as we can get. I don't know that the smelter company would be so altruistic as to smelt for others, and not take care of his own ores. That would be asking too much, I think. We have not determined to build any plant anywhere else any more than we are making a mining investment with a view to treating the ores. It is not true that any ordinary mill can be converted into one for the Coolbaugh process. We have no arrangement at the present time for taking any ore from the Mary Murphy Mine by this process.

Redirect examination.

By Mr. Whatley:

With reference to the ores which we have been receiving in the past year or two from the Mary Murphy Mine, it is a fact that most of them were quite completely oxidized ores. I don't think that the absence of zinc from those ores indicates that they are not oxidized. [fol. 292] It may be in the Mary Murphy, but not generally. I don't think the zinc will leach out when the ore is completely oxidized. You know Leadville well enough to know that you can oxidize zinc and lead ores right side by side. I don't know whether that is so with the Mary Murphy or not. The values that I gave on the ores taken from the Black Bear Mine were the values contained in the concentrate and not in the crude ore.

Recross-examination.

By Mr. Whitted:

We are not putting any crude ore through this process at Durango. The only ores that are offered for treatment—no, let me change that: This plant was designed to treat Black Bear Concentrates, concentrates that came from the Black Bear. It is milled at Telluride, and shipped to Durango for treatment in the Coolbaugh process. In the milling at Telluride a small portion of the gold, silver, lead and copper are concentrated—are taken out, because they can get them out easily, and some zinc comes with that—very little, however. The balance of the ore is divided into two parts; silica, as much as possible, is washed out and goes down the creek, and everything that is left is termed a middling product. That is the Black Bear concentrate for the Coolbaugh process. I would say that a good deal of the ore of the Mary Murphy would first be concentrated before being put through the Coolbaugh process, but I cannot say with certainty, because I am not thoroughly familiar with the mine. We have two processes by which we extract these zinc values. That is

quite common at the present time to make concentrates. You see, 75% of the material—80%—is concentrates. I would say that the concentration for the Mary Murphy Mine would take place at the mine. The railroad company should have the figures on the tonnage of concentrates that they transported when the mill was operating before. I do not have any idea what effect that concentrating would have on the railroad. It would not seriously reduce the tonnage of the railroad company; I would say that it should increase it considerably. There is very little tonnage coming out over that railroad, but assuming that it is a 500 ton mill, when you concentrate it, even ten to one, you are going to have fifty tons of concentrates a day, which is 1,500 tons a month, as compared with 150 tons of crude ore now. I do not know the condition of that mill. I have been there. At the present time gold is about $19.50, and silver about $.63; lead about $.06; zinc about $.06, copper about 14½ cents. Those are the values laid down at the Eastern market.

WILLIAM RUSSELL was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is William Russell; I am a granite cutter by trade. At the present time I am connected with the Colorado Wholesale Granite Company. I am acquainted with the line of railroad known as the Buena Vista-Romley line of the Colorado and Southern Railway Company. I have interests at a point known as Cascade. The Colorado Wholesale Granite Company is not financially interested along the line of that railroad, but I believe that it would be provided these [fol. 293] abandonment proceedings had not taken place. I testified at the last hearing with reference to a deposit of granite along the line. That granite is still there. I was up there last week, and I guess there is five or six hundred tons of it along the line, over half a mile long. I have gotten down about five or six hundred tons of that granite, and it is our intention to ship it out, providing we can ship it. There wouldn't be any difficulty in selling it. We could sell it provided we know we are going to run. We are not going to put up equipment and spend money until we know we can ship. I cannot throw my money out unless I know I am going to stay there. We have one of the largest quarries in the United States there. We have got ready today for shipment four or five hundred standard gauge cars. There is no use taking out any more. That is ready for shipment at any time as soon as we know we are going to be able to stay there. That granite is what we call dimension size. It is cut by machinery. I believe that that granite could be produced for twenty-five or thirty cents a cubic foot. That is the cost; that is not the selling price. We can sell it for a dollar a foot. We cut out this granite that is there at present for the purpose of shipping it.

I don't know how much granite we have there. I will give you an idea, if that will do you any good. Where I came from, over in Scotland, they started a quarry there in 1904, and it is still in operation today, and this is twice as big as that. That will give you an idea. We commenced the actual development of this granite quarry last year. We are not ready to go producing it until this thing is settled. To tell you the truth, I can stand my loss but I ain't going to stand any greater loss until I have to. I figure that if the quarry is properly equipped, it ought to be brought up to the railroad track, but I am not able to put it there. I might have to haul it—I cannot haul it up to the switch—it is too steep—unless I had a blondon—but to the granite bridge, it is 3 1-3 miles. That is my plan. I would have to haul it down to load it. It is a down hill haul—, three and a third miles. I suppose a blondon takes its name from Blondon, the tight-rope-walker. It is a swing that runs on a—an aerial tram, I suppose you would call it. If I had that in I could load it right from the quarry to the flat cars; but I haven't got enough money to put it in. There is room there for a switch; that would be a God send. I couldn't put in a switch. I couldn't say how much granite I could or would produce there if I knew the railroad was going to continue in operation. It is natural to assume that we would produce all we could. Of course, this could be regarded as a building stone as well as monumental stone. They look on it as monumental stone, but it goes into buildings such as the Federal Reserve Bank, which is not in the market at the present time, and also the new City Hall and Court House. There isn't another quarry in the State of Colorado that could equal that, as far as getting stone out in dimension size. There is no other granite in the State of Colorado that compares with it that I have ever seen, and I have seen most of it. This is not a hole in the ground but it is a real quarry, and you don't have to take my word for it at all. There is others down in the Post that have been up there—I guess eight or nine—that is two weeks ago. We took out this five or six hundred tons that we have up there now in the last two weeks. As to whether we intend at this time to ship that to Denver depends. I will tell you: The cost of a derrick, you understand, is about $1,500.00. That is not including freight or hauling. That is a derrick capable of handling that stone, and then there would be the price of a hoist, and that costs more, and then a compressor. But I am not going to put stuff up there until I know about this. If the railroad stays there, I am going to go ahead with it. I would say this quarry is about eight miles from the main line of the Denver and Rio Grande, but I don't know; it is further than that to me. It is quite a grade to [fol. 294] haul that granite by truck or wagon to the Denver and Rio Grande; after you pass the Princeton Hotel, you go down a steep grade. I couldn't tell you whether we could haul it there and sell it at a profit. We couldn't work this quarry at all if this railroad were abandoned. Light granite in this state is cheaper than darker granite, you know.

Cross-examination.

By Mr. Whitted:

I have never shipped a car of granite over the road. I have never asked for a car to ship it. I have contracts at the present time that calls for a supply of granite. These contracts are with the Colorado Wholesale Granite Company, 620 Curtis Street, Denver, Colorado. There is considerable granite in this state. I would consider Seerie's quarry in Platte Canon the closest one to Denver. It is about 32 miles. I would imagine that my quarry, following the D. & R. G., is about 250 miles from Denver. I am considerably farther from Denver than Seerie's quarry. There are only three quarries on this side of the mountain range that were operated to my knowledge. One was by old man Bossi, another one by Frank Honas and Seerie. That is three. Those are the only three quarries to my knowledge. We are shipping stone to Denver all the time from Salida. I have never shipped any from this particular quarry above Mount Princeton and will not until I see what happens. The railroad has been there for a number of years, but I haven't had the quarry a number of years. I have had it, I guess, about two years now. It will be two years the fourth of July, I think. I cannot tell you exactly how long. During that time I have never shipped a pound of granite. I have contracts now for my granite. I can ship all the stuff I care to. I have no written contracts, but I have verbal contracts by which somebody is ready to take it now. We have some stuff lying under the viaduct at Sixth and Curtis ready to go. I have had that quarry about two years. I have another granite quarry myself. That is black granite. I do not work there, but my father-in-law works it. I testified at the last hearing.

Redirect examination.

By Mr. Whatley:

I stated at the last hearing why I had not shipped from this quarry. I have everything ready. I have had conversation with officials of the C. & S. Railroad in regard to opening up this quarry. They told me that they expected to abandon the road. That is why I am not spending any money there. I do not have much to spend, but my employer was ready to put up the money and was ready to go, but when this thing came up, he would not do it, and I do not blame him. This Platte Canon granite of which I spoke is a different granite. One is pink and the other is white. This granite would not compete with the Salida granite; it is a different field all together. The Salida granite we haul all the way from 10 to 11 miles to the railroad. It has been hauled and shipped at a profit. The Colorado Wholesale Granite Company handles a great deal of granite—I would say 20 or 30 cars a year. Since the last hearing was completed, I have spent $700 or $800 there on development; that is building roads, putting in cabins and things of that kind.

[fol. 295] GEORGE E. COLLINS was thereupon re-called as a witness and, having been previously sworn, testified as follows:

Direct examination.

By Mr. Whatley:

I have been in the room and heard the testimony of Mr. Fields, the engineer of the American Smelting and Refining Company with reference to the Coolbaugh process and I am familiar with that process as he has further described it. That process will be particularly adapted to the great majority of the ores in the mines located along the Buena Vista Romley line—between Buena Vista and Hancock, but not to all. The reason why the ores which the Smelting Company has been receiving in recent years from the Mary Murphy Mine are not ores properly to be treated by the Coolbaugh process is very obvious; because the type of ore that was suitable for the Coolbaugh process we have been compelled to leave behind. It is only possible now, under present conditions, to handle the kind of ore from the Mary Murphy Mine that is unsuitable for the Coolbaugh process, but that is a very small proportion of the ore that occurs in the mine. The Mary Murphy mill is equipped for doing the concentrating for the Coolbaugh process. In what we call the concentration mill, no changes would be necessary at all, but changes in the direction of simplification would be advisable, because the type of mill for the Coolbaugh process would be a very much simpler and rougher type of mill than that which we have used. The Mary Murphy mill as now installed is equipped to concentrate the ores for the Coolbaugh process. No new equipment would be necessary. We have been leaving these ores suitable for the Coolbaugh process behind ever since the mill closed down in 1919. My recollection is that when we operated the mill we concentrated our ores at the ratio of about seven into one. To mill, so as to make a middling, as Mr. Fields explained it, for the Coolbaugh process, we should concentrate at a lower ratio, five, probably, into one, because, in order to make the elaborate separation that we tried to do before, and that were necessary before in order to make saleable products at all, we had to increase the losses, and we did increase the losses. We should be able to mill with very much less loss for this Coolbaugh treatment than we did previously. Concentration of these crude ores would not tend to reduce the railroad company's tonnage. As compared with corresponding tonnage of concentrates, when we were operating the mill for concentrating ores, with the Coolbaugh process, the tonnage would tend to be somewhat greater than it was previously. The shipments now are very small. To concentrate and ship these ores would be many times what the tonnage is now. That is true because of ores suitable for the Coolbaugh process are not shipped under present conditions, but if we treated the ore to ship for that process that would increase the tonnage.

The capacity of the mill is from 175 to 200 tons of crude ore per day. With the simplified method that the Coolbaugh process will

admit, it could be a little increased—the capacity could be a little increased, because the same machinery could handle a little more, over 200 tons a day.

I have talked with a great many mining men in reference to the Coolbaugh process. If there is a plant to apply the Coolbaugh process available within a reasonable radius from the district—and that depends on our railroad friends—what freight rates they make—I cannot answer specifically as to distance, because there are no commodity rates from Romley to Durango. Fe cannot ship at all there unless we ship on a combination of local rates. If a reasonable rate were made to Durango—what I think could be made—we could even [fol. 296] ship to Durango. I should say that about $5.00 a ton is what could be borne by this ore we could ship to Durango. There is too much assumption, because that would not be a sane way to operate anyway, because the products have to come back with equally expensive freight rates to where the markets are. That is not a sane way of operating things. I should say that with a Coolbaugh plant at either Leadville, Salida or Pueblo—you see, the distance possibly is greater than 100 miles—it would be entirely feasible, and would lead to the creation of a commercial business in the mining and milling of complex ores in that district. I don't think anybody could say how much that would mean in tonnage. The present milling capacity of the two existing mills in that vicinity—at Romley and St. Elmo—both of which have sidings on this line, would be something under 300 tons a day, and assuming a concentration ratio of five into one, would mean shipments of about 60 tons per day. We load from 20 to 25 tons on a narrow gauge car. If we go above 27, we sometimes are invited to go and unload that car. Without the Coolbaugh process, or some other of the similar methods that have been worked out within the last five or six years—without some of them, I should say there isn't any hope for this mining community served by this line of railroad. I don't think there is any possibility of that district shipping enough to pay operating expenses on the road without some such method. If the American Smelting and Refining Company should announce within the next thirty or sixty days that the Coolbaugh process is a failure, my opinion would be, knowing, perhaps, as much about the Coolbaugh process as any of the engineers of the A. S. & R., that they were "off their base." I should want to know specifically what the reasons were, or what the difficulties were, because I have looked into the Coolbaugh process long before the A. S. & R. became interested in it, and I am convinced that it will—there is no use asking me a question that is based on a hypothesis that to me is not correct. To me the Coolbaugh process is a demonstrated success. It was, more than a year ago. I stated a year ago that it was proven as definitely and conclusively as anything in scientific metallurgy could be; that was true then, and it is true now. In speaking of the mining section served by this line of railroad, I have not had in mind the Mary Murphy mine alone, but a great many other mines in the district besides the Mary Murphy. If the Coolbaugh process is demonstrated a success, I think it would create a market for that kind of

ore. I base that on having seen a very considerable number of those mines and prospects, and knowing the character of the ores that they contain. There is not a measureable tonnage of ore in these mines along this line of railroad. By "Measureable tonnage" I mean opened up usually on three sides so that there is sufficient evidence to warrant a mining engineer in making a tonnage estimate. There are no mines opened up in that way in that district. But the probable, aggregate tonnage is very considerable. I base that on my engineering knowledge of the district. I don't believe that a figure of the probable tonnage really ought to be stated. I do not believe that I ought to state estimates of tonnage without workings of the character to block out a tonnage. What I had in mind is a sufficient tonnage to warrant an output of somewhere from 100 tons a day to 1,000 tons a day for an indefinite time.

There are two concentrating mills located in that district now; one belongs to the Mary Murphy Gold Mining Company, and the other I don't know, but it belongs to some company that Mr. Taber represents. I think the outlook and prospects for the mining operations along this line of railroad are just about the same now as they were at the former hearing. I think that the general outlook for [fol. 297] the price of the baser metals is rather better than it was then, and that of silver rather worse than it was then. I do not base the brighter outlook for the baser metals on the new process of extracting this zinc; I am thinking of the prospects for the market prices of the metals, and that is largely based on some knowledge of the world's demand, together with the known supply. Throughout the world as a whole, for more than a generation past, the commoner metals have been extracted at a greater ratio than the new ones—new mines have been tapped—and it is the general opinion of nearly all well-informed mining engineers, that all of you will have to pay more for your metals in the future than you have in the past. Nearly all engineers believe that. Sufficient new mines are not being opened up to make up for the ores that have ben extracted. The output has been tremendous. They are not being extracted at the same rate that they used to be. The output has been tremendous throughout the world.

Mining conditions in Colorado during the past year have been very bad. There is some tendency to improvement. I think the Coolbaugh process is going to stimulate conditions. Since the hearing of this case before I have endeavored at different times to persuade the management of this railroad company that business might be stimulated by changes in freight rates and conditions. I met with considerable success in the long run, but it took too long to attain that success. I did not succeed in convincing them until it was pretty much too late to show any results, at any rate during this last year. I mean that I explained to the traffic manager of this road that in my opinion changes in freight rates would tend to improve the output. By intelligent reductions of freight rates, the output would be stimulated, and eventually reductions along the line that I asked for were attained, but too late to make any showing, because they came after winter had set in. This winter has been probably the most

severe ever known in that district. In the meantime, the men we had working in the mine became discouraged, and the majority of them quit, and it has been almost impossible to interest new men. Then, just about the time that we might have been able to do that, this new application came along, and now it is impossible to interest anybody in financing mines in that district, or in leasing mines in that district, or taking any interest in it at all, with this threatened abandonment hanging over it. People will not risk even a few days' labor in the face of this proceeding—this threat of abandonment. Since the decision in this case came down a year ago, the railroad officials have stated that abandonment was their continued intention. I remember that that has been stated to me, and while I don't remember the dates, I think it was not so very long after the decision was announced last year, and people up in that district observed that men came up there to tear up the tracks. I was told by a man in whom I have absolute confidence that he saw a contract which provided for the tearing up of the track—it included a part of the track from Romley to Hancock. I did not see that contract myself, but I was told by a man in whom I have implicit confidence.

Mr. Whitted: In order to offset that sort of hearsay evidence. I will say that there is no such contract.

Exam. Money: You would know it if there was?

Mr. Whitted: Yes, sir.

The Witness: I can add this: that our representative at Romley received a telephone message asking him to go personally and convey a message to a man named Turner, who was occupied in tearing up tracks, that he was not to take up any of the tracks east of Hancock until further instructions were sent.

Mr. Whitted: Now, Mr. Examiner, this is all beside the record. What has happened up there is that they have been taking up part of this property abandoned since 1910, during the past year,—not this particular line, or anything that served Mr. Collins, but beyond that some of the old rail which was abandoned years ago has been taken up. I have asked Mr. Collins to confine himself to the taking up of the track which serves his property. That is all he is interested in. We have not operated over the line that has been taken up, in thirteen years. That is all there is to it.

I don't think I have anything else to add with reference to mining conditions there, and the reasons governing them since the former hearing. Since that time our company has been engaged in shipping ores for leasors mining in the upper levels, almost all of which is oxidized ore, which could not be concentrated in any event and which contains practically no zinc. I think I ought to explain to the Examiner here, that on the Mary Murphy Mine here, it is so close to the surface as to be completely oxidized, containing practically no zinc; so that that ore from the Mary Murphy Mine which is oxidized contains no zinc, therefore it could not be concentrated anyway; it contains none of the sulphide ores. That is merely the ore that has been shipped from the Mary Murphy Mine since we closed down the

[fol. 298] mill. Nearly all of the ore that we have shipped since we closed down the Mary Murphy Mill has come from within 300 feet of the surface, from near the top of the mountain, and it was always shipped as crude ore. During 1922 and 1923, we have been shipping four or five cars a month, but for a little over a month, I think, there was no railroad service, and for two weeks before that it was impossible to get cars. There were six weeks when no shipments were made. Production started during that time, but the fellows got discouraged, and some of them left, so that only a part of it was continued during that time; and that has been one of the most difficult situations there—the men who quit have not gone back and won't go back, they haven't any confidence in it, because they thought and I thought, that the cessation of the service for that month was unnecessary, and that no adequate, reasonable attempt was made by the railroad to operate during that month. I would say that was between March 14 and April 14 of this year. There were no snow slides. There was snow—there is always snow in the winter, but there was no snow condition that could or should have stopped trains from running, if reasonable common-sense management had been used. If reasonable, common-sense management had been used on that road, I am quite convinced that there would have been no cessation of service during that period of one month. If the operating department of the railroad had even kept the promise that they made to me, when I made a suggestion how they could operate—if their promise had been carried out, there would have been no cessation. There was a heavy snow fall on the lower part of the road below St. Elmo and there was a light snow fall—I am talking now about the period between March 14 and April 14. On April 17, the train got out to St. Elmo at 5:30, and instead of going on two and a half miles from St. Elmo to Romley and turning around, so that the track could be cleared by the plow,—Romley is 2½ miles beyond St. Elmo, and at Romley there is a table to turn around—instead of going up there and turning around, they backed down from St. Elmo, and backed down with the snow plow behind them, which pulls the snow back and packs it on the surface of the rails. The same thing has happened in years gone by, and we always know what will happen. The next train day was April 19, and they did the same thing, but owing to the fact that the track was packed with snow, they got up on April 19th to St. Elmo at nine o'clock in the evening and went back and packed the snow. Now, on April 19, knowing that that was going to happen, and knowing what had happened on the 17th, I called up the Division Superintendent of the Railroad and he promised me that instead of going back they would keep right on, turning around and clearing the track, and had that been done there would have been no cessation of operation, but it was not done. I think, Mr. Examiner, that it is very relevant, and I think I have a right to make this statement, and I want to make this statement that in my opinion as an operator, who has been operating a mine property, and I have seen the operations of railroads on narrow gauge lines—my statement is that particularly the owners of this road have been operating this road for years to make a case

for abandonment rather than service to the public. I don't think I could make any sharp line as to when it commenced. I would say it was something like five years. This cessation of operations and other conditions that I have described have caused a number of leasers to quit their work on the Mary Murphy Mines. That partly accounts for the reduction of shipment in the past few months, and it accounts for my failure to get an increase in shipments. An increase would be due to the continued operation of the present men and the men going in. When I got this concession in freight rates, I fully expected to increase production, and my conviction is—I haven't paid very much attention to these people beginning operations, but I had quite a number of other requests for leases. When they are feeling hopeful, they always expect to do more.

[fol. 299] We haven't had any coal situation in the last year. We were unable to get any coal last fall because the coal mines on the other side were unable to supply us with any coal. They said they were unable to get any cars. The strike of the railway shop men probably had a great deal to do with it. We tried to buy coal. I don't know whether any other company up there did or not. I had last summer a proposition on the part of some leasers to operate the mill on the tailings, which would have required a lot of coal. As we have been operating in the past we would have needed only two or three, or three or four cars a year. Two cars, and possibly three. Two cars were reuired—we had our order in for two cars, and probably would have needed two more. The mines told us that they couldn't get the cars. I had an order in for several months. From the property over there that Mr. Bulkeley is connected with at Crested Butte on the D. & R. G. Road. That is practically our only experience with coal up there. I don't know of any rate in effect on coal from Walsenburg. We were promised from week to week shipment, and we did not put an order in somewhere else, which we perhaps might have done.

I have been to see this granite quarry up there that Mr. Russell has testified to. The only thing I could add is that it is obviously correct that it could be produced very cheaply. There is no other place where granite could be produced as cheaply. There is no granite in the state like it, he said, and besides that is on this side of the Continental Divide. This is not monumental granite. It is building granite. It would not be used for some purposes. Pink granite is only used in special types of buildings.

By Mr. Whatley:

Q. Now, Mr. Collins, you are familiar with this line of railroad up there, and you know that each end of it has been abandoned—that is, a portion of each end—and this section is simply a part of the middle of what was formerly a long line of railroad?

A. Yes.

Q. What can you say as to the conditions now on this line in the way of getting freight as compared with what they were before the abandonment took place?

Mr. Whitted: That abandonment was thirteen years ago. Are we going into that?

Exam. Money: I don't think so. That is in the Commission's report.

Mr. Whitted: Yes, they know all about it.

Mr. Whatley: There is something in the former record about it, but I want the record to show that I do not believe there is any one stretch of line standing by itself on this company's system, that is, taking 25 or 30 miles operated by itself, that will pay.

Exam. Money: They have through service—they bill through from there in interstate connections.

Mr. Whatley: Oh, yes, but it is much more expensive.

Exam. Money: I do not believe the Commission would care to give any more consideration than in the previous report.

I am familiar with this line of railroad up there, and I know that each end of it has been abandoned—that is, a portion of each end—and this section is simply a part of the middle of what was formerly a long line of railroad. We used to get coal very much cheaper. Except for this month during this past winter there has been no absence of service warranted by the volume of traffic. I know of examinations of property made by myself in that district since the former hearing. There have been fifteen or twenty houses built during the winter, west of the Mount Princeton Hotel—half a mile or three-quarters of a mile west. That is inside the mouth of the canon. I don't know whether they are for permanent habitation or not. Some people will live there during the winter. They look more like summer cottages. I haven't counted them, but I guess there would be between fifteen and twenty. I don't know of any more that are contemplated along the line. I have been told that a great many more have been contemplated both there and at Alpine. I think it is some kind of a colony from the outside. It is not a tubercular colony, or health resort. The lady that told me about it did not speak of that. It is a colony of people. I think it is for summer and fall occupation, for tourists and sport, and so forth. It was not entirely a summer colony. I think it was their intention to build ski courses up there for all the year round tourists, and health resorts, something like those places they have in Switzerland, if you have been there. I think, by automobile road, it is twelve miles from Mt. Princeton to the D. & R. G. As the crow flies—there is no direct road—The only other developments on the line that would offer tonnage to a railroad in continuous operation, since the last hearing, that I have heard of, are in an investigation stage.

I don't think there are any interstate commerce shipments handled on this line of railroad. All the ore that is shipped out of there is entirely intrastate. I don't know where the machinery for the Warrior Mill came from. I didn't testify to that.

[fol. 300] I know a little about the spring around this resort that is being developed up there. It is a really hot spring, radio active, which is the hottest, and the second radio active spring in the state, and one of the most radio active springs in the world. It contains radium. You know, many deep seated springs contain radium, and

some authorities consider that has very great medical value, and this seems to be very radio active. It is around that spring that these cottages are being built.

Cross-examination.

By Mr. Whitted:

The Mary Murphy Mining Company is operating these mines through leasers only, at this time. The interest of the Mary Murphy Mining Company in this matter is not entirely the royalties paid by those leasers to it, because these leasers work entirely under company direction. The ore is shipped by the company, and it is not like mining operations where they are independent. The ore that is being dug out there at the present time, is dug out by leasers. We pay them a certain percentage of the value of the ore. The Mary Murphy Mining Company handles it, and sells it, and provides them with supplies. The question whether the Mary Murphy Mining Company is actually doing any mining at the present time itself and that all the mining that is being done on the property is being done by leasers is a question that cannot be answered yes or no. That is just like the same old question, "Do you still beat your wife?" Answer "yes or no." The miner is mining on a royalty basis. The miner is paid a proportion of the value of the ore he gets. That is the method by which he is paid. The ore is shipped in my name as trustee. These people mine that ore and the smelter pays me. I take out a certain percentage, and I take out the different charges and other deductions, and pay them the balance as their wages. The smelter, before it gives me the money, takes out the smelting charges and railroad charges and then I take out a certain amount in the way of royalty and service in selling the ore. The mine is now being operated through leasers. I don't know how many we have in the mine. Every day it changes, but since March it has not averaged more than eight or nine. I testified in my previous examination that at the time I gave my testimony there were fifteen or twenty men working on the property. There is a less number at the present time. I do not recollect the amount of compensation that the Mary Murphy Mining Company received during the past year as its net income from this property. I do not recollect the amount, but I can tell you this: That it amounted to less than the taxes and the cost of the caretaker who attends to the shipments, and expenses of that kind. The taxes on the property have been paid for 1921. There are always some accrued taxes for the year in which they accrue. Any statement made will show accrued taxes unpaid, just like your own statement will show it. My recollection is that the 1921 taxes are paid, and that the 1922 taxes are not paid. In my previous testimony, over a year ago, I said: "In my opinion, the depression which has been caused by this combination of causes has a little more than reached the bottom. Some of the conditions are entirely terminated. For instance, the cost of mining labor is very nearly now down to the pre-war figures, and the efficiency of labor is now about equal to that of 1915. The price of silver, thanks to the Pitt-

man Act, is fixed at a minimum of a dollar for a period which I should estimate as three years, and the prices of copper and lead, according to the universal opinion of those who are competent to judge, are on the up-grade. Zinc will not increase in price for [fol. 301] probably another year, but after that, all metal prices are almost certainly to go on advancing for a period of years after that." Now I said in that testimony at that time that labor was down to the pre-war period—It has since been advanced, by the way. I said that efficiency of labor was back to about 1915. That was before the United States was in the war, but conditions started before the United States entered the war. At the present time silver is off 33⅓ from what it was at that time. Our operations in 1922 and the first five months of 1923 were not less than they have been in the history of the property but were less than at any time since I have been connected with it.

The minimum freight rates charged at the present time from our point of shipment to Leadville, as far as I remember—wouldn't it be better to let me refresh my memory? It was put in the last record. Thre has been a downward change, a reduction on these freight rates during the last year. There has been no rise in any freight or passenger rates, and there has been a downward rate on ore. The downward rate on ore took place during the winter—the rate was reduced. That was not a uniform reduction at all. Practically the greater part of that reduction took place at the expense of the connecting line—the D. & R. G. That was the rate to Leadville. The reductions were almost entirely made by the D. & R. G. cutting out a large percentage of their share. The C. & S. gave very little. Unfortunately, the reduction took place after the winter set in and too late to really help us. I have not stated what the reduction amounted to in percentage. It was not a uniform percentage at all. It was arbitrary. It was on different grades of ore. It was approximately fifty cents a ton down. There was some ore on which there would be no reduction at all. The rates are based on value, and on most of it, we have gotten a reduction of fifty cents a ton. That is the kind of ore we are actually shipping. Most of the ore we ship goes in under a rate of $1.85 to $2.35 a ton 'oday, and the rate was approximately fifty cents higher.

At that hearing in February, 1922, I testified with reference to the change in metallurgical conditions, and specially had the Coolbaugh process in mind, because I was especially familiar with it. In other words, this matter of the Coolbaugh process was presented to the Commission about sixteen months ago, at the time I gave my testimony.

I keep a record, under the company operations, of the average cost per ton of producing our ore at our mine in any year. We count as the cost of mining ore the proportion that the leaser gets—the actual money that the leaser gets we call the cost of mining ore, but really that is merely guessing backwards. We don't know what the leaser pays. The actual payments of freight rates are made by the smelting company and deducted from the sales. The rates which I testified to are the published rates from Romley to Leadville. Those are

the rates published, anyhow, and they have got them wrong. It is just a mistake. You have, of course, your published rates. They do not charge us any freight rate over and above that published rate—not if we find it out. It might be better to get those freight rates from the actual schedule, because my memory is not exact. The reduction varied but most of it is about fifty cents.

The depth of the deepest working in our mine depends on how you measure it. The Mary Murphy Mine outcrops on quite a steep [fol. 302] mountain. If you take from the top of that mountain to the lowest point there is, it will be about 2,200 feet—to the lowest point from the highest point. It is worked by a succession of levels and tunnels, and those tunnels are connected by shafts inside the mountain. It is a very old mine. I have always understood that 1873 was the original discovery of the Mary Murphy, but I don't know. The time when the greatest shipments were made was 1879 to 1882. Silver was pretty high then, but it is not primarily a silver mine; if you take actual metal values—lead, zinc and gold—the average prices are about equal, and then silver would be next, and copper last. During my connection with the mine for two years we had zinc the greatest value, and then gold, and then lead, and then silver, and then copper. The last few years gold and silver have been about equal. We have not been paid for zinc at all. It all depends on the type of ore that is shipped, but they are all five there, just like this Black Bear ore that they are trying now in the Coolbaugh process. It contains gold, silver, copper, lead and zinc—all five. The average of the shipments we have made to the smelter would be much more than half an ounce gold; it would be more than an ounce to the ton. I suppose in the last year the average would probably be about an ounce in gold. You asked for the invoices of all shipments for last year, and what I told you the girl to give you was for last year, and that is what I thought you got—from June to June. She was supposed to give you the last year, and I presumed she had.

By Mr. Whatley: The interest of the Mary Murphy Mine in this line of railroad is its hopes for the future. The mine has been, in my time, very hopeful—in 1914, 1915 and 1916. We thought it was a very important and very profitable mine. My recollection is that it was such in 1916. It is not a worked out mine. There is probably a great deal of future to the Mary Murphy Mine, if conditions are right, but it is exceptionally dependent on conditions because the ore is so complicated. A good many things could happen to it; some favorable things could happen to it. There have not been many favorable things lately. I said that the future of that mining district depended on some other development in metallurgy or improvements in conditions. There are other developments in metallurgy in process of development at this time for that type of ore. I testified at the former hearing that there are several others that are not very dissimilar to the Coolbaugh process that are in operation and very successful operation elsewhere on a huge scale, and extremely profitable and important. When I emphasized the Coolbaugh

process, the main reason was that it is so simple and applicable to our conditions here. There are other ways out of our mess here, but that is the simplest way out and the way out that utilizes our investment.

S. L. TABER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is S. L. Taber. I reside at St. Elmo, Colorado. I am connected with the Flora Belle Mining Company, and the St. Elmo Milling Company. I testified at this hearing before. Since the [fol. 303] former hearing there has been very little change with our company, on account of the handicap, as it were, put on us by the last decision, possibly, of the Interstate Commerce Commission in this case, and notice of this hearing, or the application in this hearing, and also the contract for the taking up of the rails from Romley up, and our inability to get coal last year. Last fall we expected to do something, and we wanted to do something, and we ordered some coal—two cars of coal for our mill at St. Elmo, and we were told by the C. F. & I. that coal could not be shipped on account of their inability to get cars, on account of the railroad strike, and before that was over we were frozen up to such an extent that we couldn't get started. This spring I had parties up there, and we had hopes of starting up, and the question of the closing down or the junking of the road came up, and that put a quietus on us for a while; we are not able to raise the funds, or get anybody interested up there as long as the closing of the road hangs over us, and we do not want to spend any more money if the railroad closes down, because when the railroad goes, we go with it, and consequently we do not want to spend any more as a company, and it is impossible to get outside capital in there if they understand that the road is about to close down. Our company has been different from Mr. Collins' company—we have been developing our property, and it just got to the point where we hoped to ship but we have closed down on account of the conditions of the last several years and mining conditions have been very bad in all mining camps, and that is about our situation at the present time; it is impossible to do anything under the conditions. This application to re-open the case came when the snow was not gone yet; when this application came, I had a party up there looking at a property in Hancock, from Socorro, New Mexico, and we walked over three feet of snow, and sometimes four feet of snow, to the property. I tell you that to show you that we were not delinquent in trying, but the snow conditions were such this year, it was so late, you understand, that it was off until this hearing, or this proposed hearing, was disposed of. The result is that our company does not want to invest any more, and no one else does, until this matter is settled.

There has been development work done in the camp since this case was started. Last year all through the summer until late in the fall, the Rarus-Warrior people worked about fourteen men and installed their compressor machinery, quarters, and so forth. That was put in during the summer and fall. I know that they built from fifteen to twenty houses down about three-quarters of a mile (from Mr. Princeton). They also contemplated putting up another large hotel. This was told me by Mrs. Fuqua, the party putting them up. I know something about a proposed settlement at the old town of Alpine; She has also bought the townsite of Alpine. Alpine is about four miles east of St. Elmo on the C. & S.

The reason we did not start last fall was because we could not get coal. We ordered two cars of coal from the C. F. & I., and after waiting two or three weeks, we got in touch with the C. F. & I., and they claimed they could not promise a shipment of this coal until the railroad strike was settled, on account of their inability to get cars.

I heard our County Commissioner the other day say that the reason he did not ship over the Colorado & Southern was that he was forced to pay as much for a narrow gauge car of hay from Nathrop to Buena Vista, as he was a standard gauge car from Nathrop to Buena Vista. I mean he had to pay the same price per car, and the broad gauge car, as I understand it, hauls twice as [fol. 304] much tonnage as the narraw gauge. The Colorado and Southern and the D. & R. G. serve both of these towns. We were talking of the C. & S. business and the probable business that could be done, and that was one of his statements. I presume the Buena Vista people might object to the abandonment of this road betwe n Nathrop and Buena Vista, but I do not see that we have any objection. We are between Hancock and Romley. I have heard of the Coolbaugh process prior to today, during the past year, and I heard Mr. Collins' testimony a year ago or so at this hearing. We do not so much feel the need of it. We haven't the need of it as much as the other operators, because of the character of our ore.

I have stated the principal reason for our not doing anything this past winter. Other mine operators in that section have told me that the same condition has been experienced by them, and I believe it is a fact that they couldn't get coal. We feel that we haven't had a fair chance, you understand, to do anything, because it was so soon after the decision of the Interstate Commerce Commission last year, and this contract for taking up the rails, and our inability to get coal stopped our operations last winter, and this application coming this spring, before the snow was off, why, it simply put us to the bad, and we were unable to do anything.

Cross-examination.

By Mr. Whitted:

I have been interested in the Flora Belle Mining Company since 1906. It has not made shipments in the last four of five years, nothing to speak of, but, in fact, we have not been at the shipping stage. We have shipped the ore that we have been able to take out

as we have been developing it, but that amounts to only about 15 or 20 cars since we have been developing the property. That goes back to 1906, but we have not been at a shipping stage. 10 or 15 cars would cover all the shipments that we have made since 1906, but, as I say, we have not gotten up to our shipping stage yet. The St. Elmo Development Company owns a mill but it is not operating now. It ceased two years ago. We have not made any shipments in the past few years. That mill was finished two years ago, I think, or two and a half years ago possibly. We only run through I think, about 1,000 tons of ore. It is not a part of my business to sell mines; I never have sold any. I am not an agent or a promoter for the sale of mining property in that section. I have never sold any. We expected to interest the party from New Mexico and not sell it; just put a certain amount of money in it. That was not the Flora Belle property, but was a property above. It was at Hancock. I think the Mt. Princeton buildings are a summer resort, although there are a great many people that live there during the winter and go to the hotel during the winter on account of the climatic conditions and the hot baths, and so forth. I should say that it is six miles from Nathrop, or possibly five. The automobile road from there to Buena Vista is not specially good, but fair. Automobile service is the only way that they can go there, because the train only runs three times a week. When the people who locate there want to go when the train does not run, of course, they have to go by automobile, although a great many people go by the train. There are not a great many people that ride on this train, and I don't blame them, either. Sometimes you have one a day; that is pretty good. As to our inability to get coal from the Colorado Fuel & Iron Company, I received a telegram, and that is what they said, that they were not able to get cars on account of the railroad strike and could not promise any shipment of coal. We used to use about 12 or 14 cars [fol. 305] of coal at the Flora Belle Mine. In the last year we have not used any; we have not been operating. We have not used any at the St. Elmo mill the last year; we have not been operating. I have shipped some personally for myself. We usually get a car in sometime during the fall and summer, and divide it up amongst the people that need it.

Redirect examination.

By Mr. Whatley:

I testified with reference to the work done by the Rarus-Warrior during the last year. They did not have a mill, but they installed a large compressor and their boiler. Their superintendent is working there now and he told me that they are getting ready to start up. There is nobody here from the Rarus-Warrior.

G. W. CLOSE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is G. W. Close; my business is mining; I am interested in mines upon the Buena Vista-Romley line of the Colorado and Southern Railway Company. I have not formerly testified in this case. I am interested in the old Silver Boat property up there. It is located up Tunnel Gulch—what they call Tunnel Gulch—the branch of the creek runs up by the old Alpine Railroad Tunnel. Romley is our shipping point. I was up working that property until late last fall. I hope to start again this year. Of course, about a year ago I used up all my finances, and I tried to get some people interested with me, but I failed to on account of this news about the road being junked, as they call it, and I have failed to raise any money up to this time. That scared everybody off. The property, up to date, as I figure it, has about $30,000 put into it. That is the mine and all—what has been spent there for development. They shipped ore along in the early days of the property, running $4.20 a ton. I think we have ore in it now. This ore was shipped from an upper tunnel, and the water drove them out, and we had to go down the hill and drive a cross-cut tunnel, and that is what we have been doing these years—the last 20 or 21 years. We cut the silver vein—they shipped this high grade ore from the upper tunnel, but when I cut that, silver was only $.48 an ounce, and in the meantime before that, I opened up a 19 foot contact vein of porphyry and granite on the surface, and drifting on the silver vein I cut that at about a 45 degree angle, and on account of the low price of silver I kept on to cut this contact vein, and I am in the rib rock of the hanging wall side of this contact now, and I think a few more feet will probably cut the contact vein. This is a gold vein—gold will be predominant on the surface. I have $600 worth of machinery there and if this line of railroad is abandoned, I think I will haul it out and forget it.

[fol. 306] Cross-examination.

By Mr. Whitted:

I have never shipped any ore over this line of railroad. I have been up there 21 years. During that time I have been driving a cross-cut tunnel, and drifting by this contact vein. I have not made any shipments of ore over the railroad at all. From Romley they call it a mile and a half up to my cabin—up to the tunnel. The railroad is about a half a mile from me. This is up on the hillside, and there is no road to it. I would have to haul it down.

G. C. FELTON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Whatley:

My name is G. C. Felton; I am a mine operator; I testified in this case before. I am interested in the Colorado Silver Mines Company, located up near Hancock, about a half mile down the track from Hancock, on this line of railroad. The conditions with reference to our mine now, compared to what they were when this case was heard before, are just about the same—that is at a standstill. Operations since have been only in a small way; very little work; the snow came early, and we did not figure on having finances to carry us through all the winter, so we shut down the first of November, and I had parties out there to put up the finances for a few months, and we hoped to make the arrangements and carry it on, but before the snow was off so that we could get up to the mine to show the property, this thing came on again, and my prospects have gone, except that I have somebody to take hold of it, to show the property to, as soon as this matter is settled. A year ago this spring I approached one of the big operators in Cripple Creek to finance it, and he said that he wouldn't take hold of anything up there, as they probably wouldn't have a railroad, so that our property is at a standstill. If we can get the working capital, we will operate on a large scale, and we hope to get it—I think we will be able to get people to go there to finance it so that we can operate it, and I don't believe that the railroad in six months more will want to abandon it, if we have an opportunity to start operations. That is the condition now as compared to what it was when I testified before, and there has been no other change that I know of. Our ore is a complex ore. The Coolbaugh process means something to us. It amounts to a good deal to us. We have a character of ore than we can concentrate, and it runs high enough in gold and silver that we do not have to depend upon a by-product. We can ship a tonnage of first class ore, and we expect to have good bodies of this ore in our development. We expect to have a great volume of first class ore, but the second or third grade ore that we have should be concentrated, and that will give us a tonnage that the Coolbaugh process will benefit, and we can handle a great tonnage.

[fol. 307] Cross-examination.

By Mr. Whitted:

We did not ship any ore over the railroad last year; we didn't operate last year at all. We ceased operations two years ago. Prior to that time we made shipments. In 1916, 1917, 1918 and 1919 we made several shipments. The last shipments were eight cars to the Salida Smelter, but we shut down two years ago. I don't know when development was commenced on this property of ours. These claims have been located thirty odd years, but the main de-

velopments have been since our company was incorporated about 8 years ago. During that time we shipped all told between 15 and 20 car loads, but we have other veins. The Coolbaugh process will help us a great deal. We have a small tonnage that we could ship without that, direct to the smelter. I live in Denver. I have not lived up in that region for a number of years.

Thereupon Protestants' Exhibit 13-A, being the 24th Annual Report of the Board of Directors of the Colorado and Southern Railway Company to the Stockholders, was offered in evidence by the protestants, and upon objection being made thereto all thereof was excluded by the Examiner except the pages 22 to 25, inclusive, which pages were received in evidence.

Thereupon Protestants' Exhibit 14-A, same being certain extracts from designated pages of the report of the Bureau of Mines of the State of Colorado, as filed by the Commissioner of Mines on the 15th day of April, 1923, was offered in evidence and received over the objection of the applicant company.

Thereupon Applicants' Exhibit Number 15-A was offered and received in evidence, being a tabulation of the value of the mineral production of Chaffee County, Colo., for the years 1919, 1920, 1921 and 1922 as given in said Report of the Colorado Bureau of Mines, protestants' exhibit 14-A.

GEORGE E. COLLINS was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination.

By Mr. Whatley:

I am familiar with the mining sections of Chaffee County. There are some sections of that County that are not served by the branch line in question. The principal one is the Monarch. I am familiar with the mining conditions of that section as well as the other sections of that county, and I was so from 1919 to 1922. I am the consulting engineer for the people who own a heavy interest in the chief producing mine in the Monarch District, which mine is called the Madonna, located at Monarch. That is on the branch of the D. & R. G. that runs from Salida to Monarch. The falling off of production of mines outside of Chalk Creek, served by this railroad, has been relatively greater than in Chalk Creek. The falling off has been greater outside than inside this park. I have examined the report of the Bureau of Mines of Colorado and have discussed it [fol. 308] with them. I am familiar with the statements therein contained which have been offered in evidence here, with respect to the present outlook of the metal mining industry. In my judgment and observation, the statements made by the Commissioner are cor-

rect, and they are true and correct as applying to this Buena Vista-Romley line, or mining district located along this line, as well as to other portions of the State.

The concentrates of the Mary Murphy Mine are almost identical with the concentrates of the Black Bear mine, excepting that the grade of the Mary Murphy concentrates and of the Mary Murphy crude ore is a little higher than that of the Black Bear, and the Mary Murphy concentrates, after removing the high grade ore, as was explained by Mr. Fields, averages a little higher in gold and a little lower in silver, a little lower in copper, about the same in lead, and considerably higher in zinc, than the Black Bear, the figures of which were given by Mr. Fields. That was the average for several years—that is the effect of the average for several years, which I worked out last night. It would not be necessary to make any change in the Mary Murphy mill in order to concentrate ores for the Coolbaugh process, and such changes as would be advisable would be simply in the direction of simplifying and cheapening it. It would not be necessary to use some parts of the mill at all in concentrating for the Coolbaugh process. The Coolbaugh process is particularly adaptable to ore that has quite a lot of zinc in it. You recover the zinc instead of its costing a great deal of money to throw it away. It is very expensive and it adds enormously to the cost of smelting the ore; and that the Coolbaugh process is designed to save. Yesterday I explained the method of roasting. You would have to roast that ore, in any event, but you merely make a slight difference in the method of doing it, something that we all ought to have discovered years ago and failed to do, and a man accidentally stumbled onto something that was so simple that we have all been kicking ourselves that we had not discovered it instead of him. Like most other important discoveries, it is absurdly simple when somebody else made it.

Cross-examination.

By Mr. Whitted:

The present price of zinc is about six cents. It was up to about nine cents during the war. It got up for a short time over that, but very few of us got paid. Where this zinc is disposed of varies a little, but the consumption in the United States, broadly speaking, balances the production of the United States. Sometimes there is an import, and sometimes there is an export, but taking it year by year, the United States in zinc is about self-sustaining. The large zinc mines of the world are in the United States; at Broken Hill, in Australia; in British Burma, and in Silesia. Those are the largest. Zinc is not produced in this country as a by-product. There are pure zinc mines in Kansas and Oklahoma, where most of the zinc is produced. In the gold and silver or previous metal mines, lead and zinc are by-products, but the proportion of the production of zinc that comes from precious metal mines today is very small. [fol. 309] Most of the zinc is produced from Zinc mines today. These

mines that I speak of in Kansas and Oklahoma, practically fix the price of zinc, because they are the greatest producers of the zinc. There is no further prospect of any reduction in the mining and milling costs in Kansas and Oklahoma. If the zinc produced as a by-product is more cheaply produced, it will tend to displace the present production from the mines in Kansas and Oklahoma which have the higher cost; the high-cost mines in this district will be closed down by precious metal by-product production. I have never mined in Kansas or Oklahoma.

The great zinc smelters in this country are in Illinois, in Pennsylvania, in Oklahoma, in Fort Smith, Arkansas. The Anaconda Company in Montana, which produces zinc from exactly the complex type of ore that we are talking about, is very, very much larger than any of the zinc smelting plants which treat simple zinc ore, and the Bunker Hill zinc plant in Idaho which is getting into commission—I don't know whether it has started production yet or not—but it is a very big plant; that also will be larger than any of the zinc plants which treat simple zinc ore. There is a shortage of miners at the present time in most Colorado Districts. That is true in practically all the mining camps excepting the Leadville District. It is difficult to get miners. All the districts are suffering from a shortage of miners now excepting the Leadville area. It is generally true that the mines have not been able to pay wages in competition with what has been offered in other lines of work, excepting as to the men who are life-time miners—they don't usually leave that work, but for new labor, that is true.

There are 15 different levels up there on our mine, and a number of others just commenced. In most cases the levels are tunnels, but some of them are started from shafts which connect two or more levels. Eventually all of the ore is handled through tunnels, but the intermediate connection is sometimes through shafts. Our mine is near the top of a mountain. We drive our tunnel in one level and then we go down lower on the mountain and drive another tunnel, and then go down on the mountain and drive another tunnel, and subsequently connect with shafts.

I should think that excepting for work like filling boilers and putting back heads of engines our mill is in a condition to operate at once, but operations could be somewhat cheapened and facilitated by work that could be carried on after starting.

Redirect examination.

By Mr. Whatley:

The smelter at Salida, of which I spoke yesterday, is not in operation now. It has not been since the fall of 1919, when we closed down our mill. The two things happened within a few days of one another. They had a very decided connection. The closing of the Salida Smelter was the last straw that compelled our closing down of our mill in 1919. It affected our market.

[fol. 310] Recross-examination.

By Mr. Whitted:

We did not have the maximum number of smelters in the State of Colorado in 1910. At that time there were two in Denver, one in Pueblo, one at Salida, one at Leadville, and one at Durango. There were two in Pueblo. There was a time when there were three smelters in Denver and two in Pueblo. At one time we had more than one smelter in Leadville. But that is still further back. They had a very large plant at Leadville and one at Salida and one at Durango. There was no other smelter located anywhere else in the State since 1900. All those smelters have been abandoned except two—one at Leadville and one at Durango; but the Leadville one is enlarged. There are now only two plants in this State that are taking the general run of ore. The Coolbaugh plant is running on a special type of ore.

Thereupon counsel for the applicant renewed the offer made by Mr. Hayden at the previous hearing, with reference to turning over this property to Mr. Collins, or any of his associates, for operation under terms set out in Mr. Hayden's statement.

By Mr. Whatley:

When I stated in response to a question by Mr. Whitted that these other smelters have been abandoned, I meant closed down. The Grant and the Argo Smelters have been wrecked and removed. The big plant at Pueblo has not been scrapped; the Globe in Denver has not been scrapped, and the Salida plant has not been scrapped. The Argo and the Grant plants were scrapped, and one of the Pueblo plants. I don't remember the date when they were scrapped; but I should say it was eight or ten years ago. The Eiler and Holden Smelters at Pueblo have been torn down. That must be twenty years ago. The Modern Smelter here in Denver was constructed about twenty years ago and it is fully 15 years since it has been torn down.

Whereupon, at 11:00 o'clock A. M., July 14, 1923, the hearing of the above entitled matter was closed.

20. The Exhibits referred to and identified in the Transcript of Testimony hereinabove last referred to:

EXHIBIT 1-A—DOCKET 1572—DATE, 7/13/23

Exhibit 1-A is an exact duplicate of the first table set forth in response to question No. 8 in the Return to the Questionnaire except that it shows the figures for the years 1921, 1922 and the first five months of 1923, and makes a corresponding change in the column entitled "Total;" omitting as duplications the figures for the years 1916 to 1920, inclusive, it is as follows:

The Colorado and Southern Railway Company

Comparative Statement of Operation of Buena Vista to Romley Line, Showing Gross and Net Operating Revenue, Years 1916 to 1922, Inclusive, and Five Months 1923

	1921	1922	5 months, 5-31-1923	Total
Revenues	$6,542.36	$5,813.91	$1,788.18	$88,588.04
Expenses	35,746.96	30,654.28	15,401.79	236,185.04
Net Operating Revenues	29,204.60*	24,840.37*	13,613.61*	147,597.00*
Taxes	25,256.78	28,838.42	12,016.01	157,244.35
Railway Operating Income	54,461.38*	53,678.79*	25,629.62*	304,841.35*
Interest (F. M. Bonds)	24,600.00	24,600.00	10,250.00	182,450.00
Deficit	79,061.38*	78,278.79*	35,879.62*	487,291.35*

Accounting Department, Denver Colorado, July 12, 1923.

[*Red in copy.]

[fol. 312] EXHIBIT 2-A—DOCKET 1572—DATED 7/13/23

The Colorado and Southern Railway Company

Statement of Revenue on Line Romley to Buena Vista Years 1916 to 1922, Inclusive, and Five Months of Year 1923

Year	Freight	Passenger	Mail	Express	Other	Total
1916	$20,167.36	$4,007.00	None.	$339.99	$993.33	$25,507.68
1917	14,098.52	2,795.37	None.	353.36	583.28	17,830.53
1918	11,437.47	1,808.62	None.	232.93	411.19	13,890.21
1919	7,172.96	1,852.96	562.32	138.89	256.25	9,983.38
1920	5,432.58	1,122.04	346.09	111.37	219.71	7,231.79
1921	5,051.18	886.11	293.91	93.80	217.36	6,542.36
1922	3,732.64	828.75	1,090.41	None.	162.11	5,813.91
Jan. 1 to May, Inc., 1923	845.52	175.23	685.15	None.	82.28	1,788.18
Total	$67,938.23	$13,476.08	$2,977.83	$1,270.34	$2,925.51	$88,588.04

NOTE.—No mail carried by The Colorado & Southern Railway Company over the line between Buena Vista and Romley for years 1916, 1917 and 1918.

Accounting Department, Denver, Colorado, July 12, 1923.

[fol. 313] EXHIBIT 3-A—DOCKET 1572—DATE, 7/13/23

This exhibit is an exact duplicate of the third table set forth in response to question No. 8 in the Return to the Questionnaire, except that it gives the figures for the years 1921, 1922 and 5 months of 1923, in addition to the figures then stated. Omitting as duplications the figures for the years 1916, to 1920, inclusive, the exhibit is as follows:

The Colorado and Southern Railway Co.

Statement of Operating Expenses and Taxes—Buena Vista-Romley Line—Years 1916 to 1922, Inclusive, and 5 Months 1923

	1921	1922	5 months, 5-31-1923
Maintenance of Way & Structures	12,313.70	8,608.28	4,915.90
Transportation:			
Station Service	1,681.90	1,618.13	667.66
Train Service:			
Enginemen Wages	5,176.70	5,127.34	1,899.65
Fuel for Locos	3,289.63	2,638.47	1,259.88
Trainmens' Wages	4,556.68	4,389.02	1,752.38
Other Train Expenses	1,327.42	1,141.63	618.75
Total Train Service	14,350.43	13,296.46	5,530.66
Other Transp. Expenses	865.24	820.51	351.71
Total Transp. Expenses	16,897.57	15,735.10	6,550.03

Statement of Operating Expenses and Taxes—Continued

	1921	1922	5 months, 5-31-1923
Maintenance of Equipment:			
Locomotive Repairs	2,481.11	2,276.17	2,511.17
Freight Car Repairs	369.89	148.92	35.52
Passenger Car Repairs	161.27	202.77	66.36
Other M. of E. Expenses	1,289.74	1,727.23	550.53
Total M. of E. Expenses	4,302.01	4,355.09	3,163.58
Traffic	477.00	479.69	210.97
General	1,756.68	1,476.12	561.31
Total Operation Expenses	35,746.96	30,654.28	15,401.79
Taxes	25,256.78	28,838.42	12,016.01
Grand total	61,003.74	59,492.70	27,417.80

Accounting Department, Denver, Colorado, July 7, 1923.

[fol. 314] EXHIBIT No. 4-A—DOCKET 1572—DATED 7/13/23

Questionnaire Question No. 16, Exhibit 7

The Colorado and Southern Railway Co.

Statement of Passengers and Revenue Accruing to the Romley-Buena Vista Line for the Calendar Years 1916, 1917, 1918, 1919, 1920, 1921, 1922, and January 1st to May 31st, 1923, Inclusive. Local Business and Business in Connection with Foreign Lines Shown Separately.

	Local		Connecting lines	
	Passengers	Revenue	Passengers	Revenue
1916	3,711	$4,009.18	1	2.18*
1917	2,569	2,748.02	35	47.35
1918	1,589	1,799.57	9	9.05
1919	1,819	1,852.70	1	.26
1920	1,126	1,113.94	5	8.10
1921	798	886.11	-	-
1922	725	828.75	-	-
1923 (Jan. 1st to May 31st, Inclusive)	185	175.23	-	-
	12,522	$13,413.50	49	$62.58

Accounting Department, Denver, Colorado, July 10th, 1923.

[*Red in copy.]

[fol. 315] EXHIBIT 5-A—DOCKET 1572—DATED 7/13/23

The Colorado and Southern Railway Company

Statement of Freight, Passenger and Miscellaneous Revenues by Months, April 1, 1922, to May 31, 1923, Inclusive, Buena Vista to Romley Line

	Freight	Passenger	Miscellaneous	Total
April, 1922	$137.84	40.98	41.95	220.77
May, "	597.80	60.30	57.20	715.30
June, "	191.92	102.72	145.42	440.06
July, "	367.71	116.89	154.18	638.78
August, "	280.14	103.41	148.67	532.22
September, "	445.15	123.60	157.18	725.93
October, "	498.82	59.16	158.64	716.62
November, "	195.04	51.60	149.90	396.54
December, "	153.98	41.73	173.25	368.96
January, 1923	332.32	48.30	153.26	533.88
February, "	152.29	32.54	151.88	336.71
March, "	183.57	41.05	158.74	383.36
April, "	78.99	31.68	144.70	255.37
May, "	98.35	21.66	158.85	278.86
Total	$3,713.92	$875.62	$1,953.82	$6,543.36

Accounting Department, Denver, Colorado, July 12, 1923.

(Here follow tables marked side folio pages 316, 317, 318, 319, 320.)

[fol. 316]

Sheet 1

EXHIBIT 6-A—DOCKET 1572—DATED 7/13/23

Supplement to Exhibits 6 and 18

The Colorado and Southern Railway Co.

Statement Showing Total Number of Cars, Tonnage, and Revenue, by Commodities, Consignor, and Consignee, of Business on Buena Vista-Romley Branch

January, 1922

Commodities	Tons	No. of cars	Revenue	Consignor	Consignee
Ore	146	6	$175.56	Geo. E. Collins, Trustee (Outbound)	American Smelt. & Ref. Co.
Bit. Lump Coal	23	1	26.39	Colorado Fuel & Iron Co. (Crested Butte) (Inbound)	Rarius-Warrior Mine.
Hay	12	2	51.70	Chas. Nachtrieb (Inbound)	Stark Bros. Merc. Co.
Merchandise	11	..	80.42		
Total	192	9	$334.07		

February, 1922

Commodities	Tons	No. of cars	Revenue	Consignor	Consignee
Ore	143	6	$188.92	Geo. E. Collins, Trustee (Outbound)	Am. Smelting & Ref. Co.
Merchandise	6	..	41.34		
Total	149	6	$230.26		

March, 1922

Commodities	Tons	No. of cars	Revenue	Consignor	Consignee
Ore	186	8	$259.28	Geo. E. Collins, Trustee (Outbound)	Am. Smelt. & Ref. Co.
Merchandise	11	..	37.83		
Total	197	8	$297.11		

April, 1922

Commodities	Tons	No. of cars	Revenue	Consignor	Consignee
Ore	118	5	76.20	Geo. E. Collins, Trustee (Outbound)	Am. Smelt. & Ref. Co.
Cement	17	1	30.59	Sidlinger & Niles (Inbound)	J. C. Gafford
Merchandise	3	..	31.05		
Total	138	6	$137.84		

May, 1922

Commodities	Tons	No. of cars	Revenue	Consignor	Consignee
Ore	150	6	$255.75	Geo. E. Collins, Trustee (Outbound)	Am. Smelt. & Ref. Co.
Bit. Lump Coal	24	1	27.49	Colo. Fuel & Iron Co. (Inbound)	Rarius-Warrior Mine
Machinery	29	1	201.51	Pneumatic Tool Co. (Inbound)	" " "
Iron Pipe	15	1	45.68	American Iron & Metal Co. (Inbound)	J. C. Gafford
Lumber	12	1	22.80	Sidlinger & Niles (Inbound)	" "
Merchandise	3	..	44.57		
Total	233	10	$597.80		

June, 1922

Commodities	Tons	No. of cars	Revenue	Consignor	Consignee
Bit. Lump Coal	24	1	27.43	Colorado Fuel & Iron Co. (Inbound)	Rarius-Warrior Mine
Ore	31	2	56.58	Rarius-Warrior Mines Co. (Outbound)	American Smelt. & Ref Co.
Merchandise	20	..	107.91		
Total	75	3	$191.92		

July, 1922

Commodities	Tons	No. of cars	Revenue	Consignor	Consignee
Ore	25	1	31.50	Rarius-Warrior Mines Co. (Outbound)	Am. Smelt. & Ref. Co.
"	166	8	224.15	Geo. E. Collins	" " " "
Merchandise	17	..	112.06		
Total	208	9	$367.71		

[fol. 317]

Sheet 2

Supplement to Exhibits 6 and 18

The Colorado and Southern Railway Co.

Statement Showing Total Number of Cars, Tonnage and Revenue by Commodities, Consignor and Consignee, of Business on Buena Vista-Romley Branch

August, 1922

Commodities	Tons	No. of cars	Revenue
Cement	11	1	$39.07
Sand	25	1	70.00
Ore	47	2	58.42
Merchandise	18	..	112.65
Total	101	4	$280.14

Consignor	Consignee
Rarius-Warrior Mines Co. (Inbound)	Rarius-Warrior Mines Co.
" " " " "	" " " "
" " " " (Outbound)	American Smelting & Refining Co. 1 car
Geo. E. Collins, Trustee "	" " " " " 1 car

September, 1922

Commodities	Tons	No. of cars	Revenue
Bit. Lump Coal	25	1	$26.12
Castings & Mach.	17	1	93.42
Ore	112	5	152.90
Lumber	10	1	17.00
Cement	11	1	18.78
Hay	6	1	18.60
Merchandise	18	..	118.33
Total	199	10	$445.15

Consignor	Consignee
O. C. Coal Company (Inbound)	Chas. Ackers
C. A. Edwards	Rarius-Warrior Mines Co.
Geo. E. Collins (Outbound)	American Smelting & Refining Co.
Gimlet Lbr. & Supply Co. (Inbound)	J. C. Gafferd
Edward Krueger	" "
C. Davidson	Herman Clark

October, 1922

Commodities	Tons	No. of cars	Revenue
Brick	9	1	$54.06
Ore	196	9	308.86
Merchandise	21	..	135.90
Total	226	10	$498.82

Consignor	Consignee
Rarius-Warrior Mines Co. (Inbound)	Rarius-Warrior Mines Co.
Geo. E. Collins (Outbound)	American Smelting & Refining Co.

November, 1922

Commodities	Tons	No. of cars	Revenue
Bit. Lump Coal	24	1	$25.34
Ore	39	2	64.41
Brick	6	1	22.20
Merchandise	11	..	83.09
Total	80	4	$195.04

Consignor	Consignee
Rocky Mountain Fuel Co.	Stark Bros. Merc. Co.
Geo. E. Collins	American Smelting & Refining Co.
T. E. Barland	W. E. Turner

December, 1922

Commodities	Tons	No. of cars	Revenue
Hay	6	1	$16.80
Ore	49	2	85.76
Merchandise	12	..	51.42
Total	67	3	$153.98

Consignor	Consignee
Geo. Davidson	Henry Clark
Geo. E. Collins	American Smelting & Refining Co.

[fol. 318]

Sheet 3

Supplement to Exhibits 6 and 18

The Colorado and Southern Railway Co.

Statement Showing Total Number of Cars, Tonnage and Revenue by Commodities, Consignor and Consignee, of Business on Buena Vista-Romley Branch

Recapitulation 1922

Commodities	Tons	No. of cars	Revenue
Ore	1,408	62	$1,938.29
Bit. Lump Coal	120	5	132.77
Brick	15	2	76.26
Cement	39	3	88.44
Hay	24	4	87.10
Iron Pipe	15	1	45.68
Lumber	22	2	39.80
Castings & Mach	46	2	294.93
Sand	25	1	70.00
Merchandise	151	..	956.57
Total	1,865	82	$3,729.84

Consignor		Consignee
Geo. E. Collins	58 cars	American Smelt. & Ref. Co.
Rarius-Warrior Mines Co.	4 cars	" " " "
Colo. Fuel & Iron Co.	3 cars	Rarius-Warrior Mines
O. C. Coal Co.	1 car	Chas. Ackers
R. M. Fuel Co.	1 "	Stark Bros. Merc. Co.
Rarius-Warrior Mines Co.	1 "	Rarius-Warrior Mines Co.
T. C. Barland	1 "	W. E. Turner
Sidlinger & Niles	1 "	J. C. Gafford
Rarius-Warrior Mines Co.	1 "	Rarius-Warrior Mines Co.
Edw. Cruger	1 "	J. C. Gafford
Chas. Nachtrieb	2 cars	Stark Bros. Merc. Co.
C. Davidson	1 car	Herman Clark
Geo. Davidson	1 "	Henry Clark
American Iron and Metal Co.		J. C. Gafford
Sidlinger & Niles	1 car	J. C. Gafford
Gimlet Lumber Co.	1 "	J. C. Gafford
Pneumatic Tool Co.	1 "	Rarius-Warrior Mines
C. A. Edwards	1 "	" " "
Rarius-Warrior Mines Co.		" " "

Accounting Department, Denver, Colorado, May 8, 1923.

[fol. 319]

Sheet 4

Supplement to Exhibits 6 and 18

The Colorado and Southern Railway Co.

Statement Showing Total Number of Cars, Tonnage and Revenue by Commodities, Consignor and Consignee, of Business on Buena Vista-Romley Branch

January, 1923

Commodities	Tons	No. of cars	Revenue
Hay	6	1	$10.41
Ore	101	4	157.97
Merchandise L. C. L.	14	..	163.94
Total	121	5	$332.32

Consignor	Consignee
Holcomb Feed & Implement Co.	H. H. Hays
Geo. E. Collins	American Smelting & Refining Co.

February, 1923

Commodities	Tons	No. of cars	Revenue
Ore	19	1	$26.48
Ice	10	1	19.00
Logs	12	1	22.80
Hay	6	1	15.00
Merchandise	14	..	69.01
Total	61	4	$152.29

Consignor	Consignee
Geo. E. Collins	American Smelting & Refining Co.
Geo. D. Hartman	Mrs. B. Fuqua
Harry Humphrey	" " "
J. C. Donnelly	H. C. Hays

March, 1923

Commodities	Tons	No. of cars	Revenue
Ore	46	2	$50.02
Merchandise L. C. L.	15	..	133.55
Total	61	2	$183.57

Consignor	Consignee
Geo. E. Collins	American Smelting & Refining Co.

April, 1923

Commodities	Tons	No. of cars	Revenue
Hay	6	1	$16.80
Merchandise	15	..	62.19
Total	21	1	$78.99

Consignor	Consignee
A. Davidson	Herman Clark

May, 1923

Commodities	Tons	No. of cars	Revenue
Ore	85	8	$60.38
Merchandise	8	..	37.97
Total	93	8	$98.35

Consignor	Consignee
Geo. E. Collins	American Smelting & Refining Co.

Grand Total, January 1 to May 31, 1923

Commodities	Tons	No. of cars	Revenue
Hay	18	3	$42.21
Ore	251	15	294.85
Ice	10	1	19.00
Logs	12	1	22.80
Merchandise	66	..	466.66
Total	357	20	$845.52

Consignor	Consignee
A. Davidson	Herman Clark
Holcomb Feed & Implement Co.	H. C. Hays
J. C. Donnelly	" " "
Geo. E. Collins	American Smelting & Refining Co.
Geo. E. Hartman	Mrs. B. Fuqua
Harry Humphrey	" " "

Accounting Department, Denver, Colorado, July 11, 1923.

[fol. 320] EXHIBIT No. 7-A—DOCKET No. 1572—DATED 7/13/23

This Exhibit is an exact duplicate of the table set forth in the return to the Questionnaire in response to Question No. 14, excepting that this Exhibit is brought down to and including May 31, 1923, and makes a corresponding change in the total. Omitting as duplications the figures for the years 1916 to 1920, inclusive, the Exhibit is as follows:

The Colorado and Southern Railway Co.

Question No. 14. The tonnage handled by the line in question classified by principal commodities, for the years 1916 to 1922, inclusive, and five months of 1923, stating separately the tonnage (a) originating and destined to points on the line and (b) interchanged with connecting carriers and moving over other lines.

A. Local Shipments Originating and Destined to Points on the Colorado & Southern Railway Company (Buena Vista-Romley Branch)

Commodities:	1921		1922		Jan. 1 to May 31, 1923, inc.		Totals	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
Brick	....	.....	15	$76.26	..	....	15	$76.26
Castings	....	.....	...	.....	..	....	20	98.00
Cement	....	.....	39	88.44	..	....	72	138.19
Coal	....	.....	...	.....	..	....	68	68.48
Cordwood	....	.....	...	.....	..	....	30	45.00
Grain	....	.....	...	.....	..	....	48	158.13
Hay	44	$124.01	24	87.10	12	$31.80	378	682.39
Household Goods	....	.....	...	.....	..	....	6	10.89
Lumber	....	.....	12	22.80	..	....	1,016	1,421.65
Oil	....	.....	...	.....	..	....	27	75.38
Other Products of Forest	....	.....	...	.....	..	....	40	60.00
Other Manufactures	....	.....	...	.....	..	....	10	18.00
Ore	....	.....	...	.....	..	....	520	260.30
Potatoes	....	.....	...	.....	..	....	10	16.50
Sand	....	.....	25	70.00	..	....	90	119.70
Ice	....	.....	...	.....	10	19.00	10	19.00
Logs	....	.....	...	.....	12	22.80	12	22.80
Merchandise, L. C. L.	120	817.31	120	753.63	54	309.70	1,433	9,847.92
Totals	164	$941.32	235	$1,098.23	88	$383.30	3,805	$13,138.59

B. Foreign Interchanged with Connecting Carriers and Moving Over Other Lines

Commodities:	1921		1922		Jan. 1 to May 31, 1923, inc.		Totals	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
Bar and Sheet Steel	....	.....	....	.....	..	....	53	$109.46
Castings & Machinery	....	.....	46	294.93	..	....	148	674.57
Coal	313	$357.61	120	132.77	..	....	21,194	16,400.12
Explosives	....	.....	....	.....	..	....	12	89.44
Hay	....	.....	....	.....	6	10.41	13	52.74
Lumber	....	.....	10	17.00	..	....	160	353.81
Other Manufactures	....	.....	15	45.68	..	....	124	714.35
Oil	....	.....	....	.....	..	....	40	97.19
Ore	2,363	3,437.28	1,408	1,938.29	251	294.85	26,263	31,339.75
Potatoes	....	.....	....	.....	..	....	13	23.45
Miscellaneous	....	.....	....	.....	..	....	35	67.82
Merchandise	41	314.97	31	202.94	12	156.96	1,337	4,874.14
Totals	2,717	$4,109.86	1,630	$2,631.61	269	$462.22	49,392	$54,796.84

Recapitulation

	1921		1922		Jan. 1 to May 31, 1923, inc.		Totals	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
Local	164	$941.32	235	$1,098.23	88	$383.30	3,805	$13,138.59
Foreign	2,717	4,109.86	1,630	2,631.61	269	462.22	49,392	54,796.84
Totals	2,881	$5,051.18	1,865	$3,729.84	357	$845.52	53,197	$67,935.43

Accounting Department, Denver, Colorado, July 10, 1923.

[fol. 321] EXHIBIT No. 8-A—DOCKET 1572—DATED 7/13/23

The Colorado and Southern Railway Company

Statement of Number of Passengers Handled Between Buena Vista, Colorado, and Romley, Colorado, on Trains 93 and 94, December 1, 1921, to June 30, 1923, Inclusive.

	Romley to Buena Vista, passengers, train 93	Buena Vista to Romley, passengers, train 94
December, 1921:		
3	2	1
7	None	1
10	1	3
12	None	1
14	2	2
17	1	5
19	1	2
21	10	1
24	3	3
26	None	4
28	None	8
31	1	4
Total	21	35
January, 1922:		
2	1	4
4	2	3
7	1	None
11	1	1
14	2	2
16	None	1
18	1	None
21	1	1
23	None	2
25	3	5
28	1	1
Total	13	20
February, 1922:		
1	None	3
6	None	1
8	1	None
11	2	2
13	6	6
15	None	3
20	2	3
22	1	1
25	1	None
Total	13	19

	Romley to Buena Vista, passengers, train 93	Buena Vista to Romley, passengers, train 94
[fol. 322] March, 1922:		
4	1	2
8	1	None
11	None	1
15	1	1
20	None	1
25	3	1
27	4	5
29	1	2
Total	11	13
April, 1922:		
1	1	4
3	1	3
5	None	1
8	2	1
10	None	1
12	None	None
15	2	1
17	2	2
19	1	1
22	None	5
24	1	1
26	1	None
29	1	4
Total	12	24
May, 1922:		
1	2	5
3	1	None
6	None	1
8	3	8
10	4	4
13	None	None
15	None	1
17	1	None
20	None	3
22	1	3
24	3	2
27	1	2
29	None	1
31	2	2
Total	18	32

[fol. 323]		Romley to Buena Vista, passengers, train 93	Buena Vista to Romley, passengers, train 94
	June, 1922:		
3		2	12
5		3	6
7		2	10
10		6	6
12		None	3
14		3	1
17		1	8
19		None	9
21		6	None
24		None	3
26		4	9
28		3	4
	Total	30	71
	July, 1922:		
1		2	1
3		3	None
5		3	1
8		1	7
10		1	7
12		None	6
15		5	3
17		3	3
19		None	4
22		11	10
24		None	4
26		6	11
29		3	10
31		1	4
	Total	39	71
	August, 1922:		
2		None	5
5		12	14
7		None	3
9		None	5
12		6	2
14		1	None
16		2	1
19		None	5
21		9	12
23		None	3
26		2	1
28		None	1
30		2	8
	Total	34	60

[fol. 324]		Romley to Buena Vista, passengers, train 93	Buena Vista to Romley, passengers, train 94
	September, 1922:		
2		1	4
4		1	2
6		None	7
9		None	4
11		None	6
13		4	4
16		1	1
18		None	None
21		2	None
23		3	5
25		2	3
27		2	3
30		4	2
	Total	20	41
	October, 1922:		
2		2	2
4		2	1
7		1	4
9		None	2
11		2	None
14		1	5
16		None	2
18		None	2
21		1	1
23		3	6
25		4	1
28		4	2
30		None	2
	Total	20	30
	November, 1922:		
1		None	None
4		4	2
6		1	3
8		3	None
11		None	None
13		5	1
15		None	2
18		1	4
20		None	4
22		1	None
25		1	2
27		None	1
29		4	3
	Total	20	22

[fol. 325]

	Romley to Buena Vista, passengers, train 93	Buena Vista to Romley, passengers, train 94
December, 1922:		
2	2	1
4	2	4
7	1	None
9	1	4
11	2	2
13	2	3
16	1	5
18	None	None
20	1	3
23	1	None
25	None	1
30	2	None
Total	15	23
January, 1923:		
1	None	3
3	4	3
6	1	4
8	2	1
10	None	2
13	1	None
15	1	1
17	2	2
19	1	1
22	None	4
24	None	2
27	1	3
29	2	2
31	3	2
Total	18	30
February, 1923:		
3	None	3
5	3	1
7	None	2
10	1	3
12	4	2
14	None	2
17	None	2
19	None	None
21	None	2
24	4	1
26	None	2
28	2	1
Total	14	21

	Romley to Buena Vista, passengers, train 93	Buena Vista to Romley, passengers, train 94
[fol. 326] March, 1923:		
3	2	8
5	1	3
7	6	6
10	1	1
12	None	2
14	None	2
17	None	None
19	None	1
21	None	None
24	None	None
26	2	2
28	None	5
31	1	None
Total	13	30
April, 1923:		
2	None	4
7	None	3
9	2	None
11	None	2
14	None	None
16	2	None
18	1	2
23	2	3
25	1	1
28	2	None
30	1	1
Total	11	16
May, 1923:		
2	None	2
5	1	None
7	1	1
9	1	2
12	2	1
14	None	1
16	None	2
19	1	1
21	None	1
23	None	None
26	None	None
28	None	1
30	3	1
Total	9	13

EXHIBIT No. 9-A—DOCKET No. 1572—DATED 7/13/23

[fol. 328] Question No. 8. If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis.

The Colorado and Southern Railway Company

Comparative Statement of Operation, Line Buena Vista to Romley, Showing Gross and net Operating Revenue Years 1910 to 1922, Inclusive, and 5 Months 1923

	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	5 months, 5/31/1923	Total
Revenue	$31,739.96	9,401.47	10,610.06	16,969.43	15,767.15	16,923.13	15,167.90	13,356.91	12,227.67	11,657.23	12,044.96	10,858.73	11,238.12	3,444.91	191,407.63
Expenses	64,763.71	25,544.88	23,287.78	25,344.31	27,307.04	24,824.80	25,207.78	23,690.02	33,836.78	40,809.91	55,294.55	38,723.37	34,909.47	16,410.15	460,954.55
Net Oper. Revenue	33,023.75*	16,143.41*	12,677.72*	9,374.88*	11,539.89*	7,901.67*	10,039.88*	10,333.11*	21,609.11*	29,152.68*	43,249.59*	27,864.64*	23,671.35*	12,965.24*	269,546.92*
Taxes	8,005.22	13,745.07	19,490.99	20,050.42	21,690.95	21,594.31	24,186.04	28,338.40	25,846.76	27,967.97	31,406.08	35,934.38	38,188.24	15,915.69	332,360.52
Railway Opr. Inc.	41,028.97*	29,888.48*	32,168.92*	29,423.30*	33,230.84*	29,495.98*	54,225.92*	32,671.51*	47,455.87*	57,120.65*	74,655.67*	63,799.02*	61,859.59*	28,880.93*	601 907.44*
Interest	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	24,600.00	10,250.00	330,050.00
Deficit	65,628.97*	54,488.48*	56,769.71*	54,025.30*	57,830.84*	54,095.98*	58.825.92*	63,271.51*	72,055.87*	81,720.65*	99,255.67*	88,399.02*	86,459.59*	39,130.93*	931,957.44*

Accounting Department, Denver, Colorado, July 7, 1923.

[* Red in copy.]

	Romley to Buena Vista, passengers, train 93	Buena Vista to Romley, passengers, train 94
[fol. 327] June, 1923:		
2	1	1
4	3	3
6	1	1
9	1	1
11	2	2
13	None	2
16	None	None
18	None	1
20	None	None
23	1	6
25	None	2
27	None	2
30	None	2
Total	9	23

Accounting Department, Denver, Colorado, July 10th, 1923.

(Here follows table marked side folio page 328)

[fol. 329] EXHIBIT 10-A—DOCKET 1572—DATED 7/13/23

The Colorado and Southern Railway Company

Statement of Operating Revenues, Operating Expenses, Taxes, and Railway Operating Income on Platte Canon, Leadville, and Gunnison Districts for Calendar Years 1921 to 1922, Inclusive

1921:	
Operating Revenues	$475,387.41
Operating Expenses	763,739.02
Net Operating Revenues	288,351.61*
Taxes	186,874.44
Railway Operating Income	475,226.05*
1922:	
Operating Revenues	435,676.23
Operating Expenses	727,849.59
Net Operating Revenues	292,173.36*
Taxes	186,874.44
Railway Operating Income	479,047.80*

Denver, Colorado, July 12, 1923.

[*Red in copy.]

[fol. 330] EXHIBIT 11-A—DOCKET 1572—DATED 7/13/23

The Colorado and Southern Railway Company

General Balance Sheet, Month of May, 1923

Assets

Investments:	
Investments in Road	$69,091,649.60
" " Equipment	12,869,282.08
Deposits in lieu of Mortgaged Property Sold	60,494.10
Miscellaneous Physical Property	205,927.90
Investments in Affiliated Companies:	
(a) Stocks	4,585,822.56
(b) Bonds	11,335,237.12
(c) Notes	1,339,866.54
(d) Advances	598,950.00
Other Investments:	
(a) Stocks	53.00
(b) Bonds	1,127,560.76
(c) Notes	4,428,867.19
(d) Advances	13,746.55
Total	$105,657,457.40
Current Assets:	
Cash	$1,349,132.31
Time Drafts & Deposits	550,717.83
Special Deposits	832,813.37
Loans and Bills Receivable	245.78
Traffic & car Service Balances Receivable	300,840.34
Net Balance Receivable from Agents & Conductors	111,240.55
Miscellaneous Accounts Receivable	542,438.27
Material & Supplies	1,586,278.28
Other Current Assets	7,617.92
Total	$5,281,324.65
Deferred Assets:	
Working Fund Advances	$1,717.60
Other Deferred Assets	65,317.22
Total	$67,034.82

Unadjusted Debits:		
Insurance Premiums Paid in Advance		$18,586.67
Discount on Funded Debt		183,145.67
Other Unadjusted Debits		781,052.34
Securities Issued or Assumed Unpledged	$2,443,370.55	
Securities Issued or Assumed Pledged	4,190,000.00	
Total		$982,784.68
Grand Total		111,988,601.55

Denver, Colorado, July 7, 1923.

[fol. 331] The Colorado and Southern Railway Company

General Balance Sheet, Month of May, 1923

Liabilities

Stock:		
Capital Stock:		
Common		$31,000,000.00
Preferred		17,000,000.00
Total		$48,000,000.00
Governmental Grants:		
Grants in Aid of Construction		19,134.00
Total		$19,134.00
Long Term Debt:		
Funded Debt Unmatured:		
Book Liability	$57,182,270.55	
Held by Carrier	6,633,370.55	
Actually Outstanding		$50,548,900.00
Total		$50,548,900.00

Current Liabilities:	
Traffic and Car Service Balances Payable	115,109.70
Audited Accounts & Wages Payable	1,274,055.32
Miscellaneous Accounts Payable	251,376.16
Interest Matured Unpaid	43,730.27
Dividends Matured Unpaid	819.00
Unmatured Interest Accrued	393,059.91
Unmatured Rents Accrued	23,285.12
Other Current Liabilities	15,816.59
Total	$2,117,252.05
Deferred Liabilities:	
Other Deferred Liabilities	$58,406.58
Total	$58,406.58
Unadjusted Credits:	
Tax Liability	$763,276.29
Reserve for Maintenance & Operation—Guaranty Period	198,660.88
Accrued Depreciation—Equipment	5,987,566.31
Other Unadjusted Credits	105,941.44
Total	$7,055,444.92
Corporate Surplus:	
Additions to Property thru Income & Surplus	$223,307.70
Appropriated Surplus not Specifically Invested	500,000.00
Income Balance January 1 to date	386,711.70*
Profit & Loss Balance Subsequent to Dec. 31, 1922	38,156.83*
Profit & Loss Balance December 31, 1922	3,891,024.83
Total	$4,189,464.00
Grand Total	$111,988,601.55

Denver, Colorado, July 7, 1923.

[*Red in copy.]

[fol. 332] EXHIBIT 12-A—DOCKET 1572—DATE 7/13/23

This exhibit is a certified copy of the annual reports of the Mary Murphy Gold Mining Company as filed with the Secretary of State of Colorado, pursuant to the statutes of Colorado for the years 1917 to 1922, both inclusive, besides giving the names of the officers and directors and a description of its properties, these reports show the financial condition and history of the company for the several years mentioned as follows:

	1917	1918	1919	1920	1921	1922
Total Amt. Cap. Stock	$1,850,000.00	1,850,000.00	1,850,000.00	1,850,000.00	1,850,000.00	1,850,000.00
Amt. Orig. Cap. Stock	1,750,000.00	1,750,000.00	1,750,000.00	1,750,000.00	1,750,000.00	1,750,000.00
Amt. of Increased Cap. Stock	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00
Amt. Cap. Stock Paid in Cash	25.00	25.00	25.00	25.00	25.00	25.00
Amt. Cap. Stock paid for in Property	1,817,175.00	1,817,175.00	1,817,175.00	1,817,175.00	1,817,175.00	1,817,175.00
Amt. Paid Otherwise (To take up company notes)	32,800.00	32,800.00	32,800.00	32,800.00	32,800.00	32,800.00
Amt. Bonded Indebtedness	169,000.00	169,000.00	269,000.00	307,800.00	326,550.00	340,080.00
Current Bills Outstanding at end of year including notes and taxes	31,586.48	66,256.68	55,000.00	64,625.47	64,454.02	72,757.70

[fol. 333] EXHIBIT 13-A DOCKET 1572 DATED 7/13/23

This Exhibit is Pages 22 to 26, Inclusive of the 24th Annual Report of the Board of Directors of the Colorado & Southern Railway Company, (Year 1922):

General Balance Sheet, December 31, 1922

Assets

Investments:		
Investment in road and equipment:		
Road	$68,126,720.68	
Equipment	12,666,245.54	
General expenditures	798,231.15	$81,591,197.37
Deposits in lieu of mortgaged property sold		35,284.10
Miscellaneous physical property		205,927.90
Investments in affiliated companies:		
Stocks	$4,585,822.56	
Bonds	11,335,237.12	
Notes	1,339,866.54	
Advances	471,872.54	17,732,798.76
Other investments:		
Stocks	$53.00	
Bonds	1,127,560.76	
Notes	4,932,460.94	
Advances	13,746.55	6,073,821.25
Total investments (capital assets)		$105,639,029.38
Current assets:		
Cash	$1,121,087.93	
Time drafts and deposits	1,400,000.00	
Special deposits	1,297,318.83	
Loans and bills receivable	200.00	
Traffic and car-service balances receivable	274,188.98	
Net balance receivable from agents and conductors	159,969.88	
Miscellaneous accounts receivable	603,154.00	
Material and supplies	1,744,119.32	
Interest and dividends receivable	21,000.00	
Other current assets	12,997.55	
Total current assets		6,634,036.49

Deferred assets		
Working fund advances	$1,717.60	
Other deferred assets	69,651.05	
Total deferred assets		71,368.65
Unadjusted debits:		
Rents and insurance premiums paid in advance	$4,860.97	
Discount on funded debt	190,020.99	
Other unadjusted debits	1,128,178.53	
Total unadjusted bebits		1,323,060.49
Grand total		$113,667,495.01

[fol. 334] General Balance Sheet, December 31, 1922

Liabilities

Capital stock:		
Common stock	$31,000,000.00	
Preferred stock	17,000,000.00	
Total stock		$48,000,000.00
Government grants:		
Grants in aid of construction		19,134.00
Long term debt:		
Funded debt held by the public	$50,713,900.00	
Bonds owned by the Company, unpledged	2,443,370.55	
Bonds owned by the Company, pledged	4,190,000.00	
Total	$57,347,270.55	
Less bonds held by or for the Company, included in above	6,633,370.55	
Total long term debt		50,713,900.00
Total capital liabilities		$98,733,034.00

Current liabilities:		
Traffic and car service balances payable	$253,045.01	
Audited accounts and wages payable	1,717,873.35	
Miscellaneous accounts payable	23,534.36	
Interest matured unpaid	34,565.50	
Dividends matured unpaid	715,165.00	
Unmatured interest accrued	578,762.54	
Unmatured rents accrued	25,893.02	
Other current liabilities	12,343.28	
Total current liabilities		3,361,182.06
Deferred liabilities:		
Other deferred liabilities		54,073.23
U. S. Government deferred liabilities		8,910.62
Unadjusted credits:		
Tax liability	$805,153.52	
Operating reserves	199,496.98	
Accrued depreciation—Equipment	5,868,014.66	
Other unadjusted credits	23,297.41	
Total unadjusted credits		6,895,962.57
Corporate surplus:		
Additions to property through income and surplus	$223,307.70	
Appropriated surplus not specifically invested	500,000.00	
Profit and loss	3,891,024.83	
Total corporate surplus		4,614,332.53
Grand total		$113,667,495.01

[fol. 335] Income Account, Year Ended December 31, 1922

Operating Income:		
Railway operating revenues:		
Transportation:		
Freight	$10,121,548.15	
Passenger	2,032,089.87	
Excess baggage	19,671.96	
Mail	216,597.05	
Express	252,659.87	
Other passenger train	28,316.47	
Switching	250,916.31	
Special service train	9,092.08	
Other freight train	1,092.59	
		$12,931,984.35
Incidental:		
Dining and buffet	$81,726.76	
Hotel and restaurant	37,220.30	
Station and train privileges	7,940.40	
Parcel room	1,084.70	
Storage—Freight	8,279.64	
Storage—Baggage	4,348.93	
Demurrage	27,921.90	
Rent of buildings and other property	631.40	
Miscellaneous	18,488.09	
		187,642.12
Joint facility—Cr.	$75,520.80	
Joint facility—Dr.	Cr. 1,089.24	76,610.04
Total railway operating revenues		$13,196,236.51
Railway operating expenses:		
Maintenance of way and structures	$1,966,385.04	
Maintenance of equipment	3,090,818.54	
Traffic	157,517.61	
Transportation	5,038,956.93	
Miscellaneous operations	124,105.49	
General	522,213.60	
Transportation for investment—Cr.	5,332.21	
		10,894,665.00
Net revenue from railway operations		$2,301,571.51
Railway tax accruals	$829,853.05	
Uncollectible railway revenues	3,660.68	
		833,513.73
Railway operating income		$1,468,057.78

[fol. 336] Railway operating income.....		$1,468,057.78
Non-operating Income:		
Rent from locomotives.....	$93,115.40	
Rent from passenger-train cars	60,100.80	
Rent from work equipment..	6,398.76	
Joint facility rent income....	24,110.25	
Income from lease of road...	35,728.00	
Miscellaneous rent income...	34,254.33	
Miscellaneous non-operating physical property	3,035.82	
Dividend income	1,119,913.88	
Income from funded securities	617,376.40	
Income from unfunded securities and accounts.....	288,579.62	
Miscellaneous income	308.09	
		2,282,921.35
Gross income		$3,750,979.13
Deductions from Gross Income:		
Hire of freight cars—Dr. balance	$319,809.71	
Rent for locomotives	119,951.13	
Rent for passenger-train cars	61,979.77	
Rent for work equipment....	2,042.24	
Joint facility rents.....	86,122.79	
Rent for leased roads.....	112,948.64	
Miscellaneous rents	1,020.60	
Miscellaneous tax accruals...	5,733.36	
Interest on funded debt.....	2,144,058.62	
Interest on unfunded debt...	1,314.06	
Amortization of discount on funded debt	13,987.57	
Miscellaneous income charges	47,251.57	
		2,916,220.06
Net income		$834,759.07
Disposition of Net Income:		
Dividend appropriations of income:		
First Preferred Stock, 4%....	$340,000.00	
Second Preferred Stock, 4%..	340,000.00	
		680,000.00
Income balance transferred to profit and loss		$154,759.07

Net Railway Operating Income as Reported to the Interstate Commerce Commission for the Year 1922 in Conformance with the Requirement of the Transportation Act Relating to Return of Excess Earnings.

Railway Operating Income		$1,468,057.78
Non-operating Income:		
Hire of equipment	$925,944.85	
Joint facility rents	24,110.25	
		950,055.10
		$2,418,112.88
Deductions from Railway Operating Income:		
Hire of equipment	$1,270,112.74	
Joint facility rents	86,122.79	
		1,356,235.53
Net Railway Operating Income		$1,061,877.35

[fol. 337] Profit and Loss Account, December 31, 1922

Credit

Credit balance at beginning of year	$5,027,545.02	
Credit balance transferred from income	154,759.07	
Profit on road and equipment sold	501.29	
Unrefundable overcharges	15,593.79	
Donations	12,416.80	
Miscellaneous credits	9,489.86	
		$5,220,305.83

Debit

Dividend appropriations of surplus:		
Common Stock, 3%	$930,000.00	
Surplus appropriated for investment in physical property	12,416.80	
Loss on retired road and equipment	200,301.26	
Miscellaneous debits:		
Book value of capital stock of The Trinity and Brazos Valley Railway Co.	168,562.50	
Other items	18,000.44	
		1,329,281.00
Credit balance carried to balance sheet		$3,891,024.83

[fol. 338] EXHIBIT 14-A—DOCKET 1572—DATE 7/13/23

This exhibit is the annual report of the Bureau of Mines of the State of Colorado for the year 1922. The following extracts only were admitted in evidence by the Examiner.

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Metal Mining in 1922—General Conditions

The metal mining industry of Colorado is now in a better condition than it has been at any time since the war and is improving right along. During the latter part of 1920 and the early months of 1921 it was more depressed than it had been since 1893. This depression was due to the rapid fall in the prices of lead and zinc added to the war-time costs which had not at that time begun to decrease. Practically all the mines which were worked primarily for zinc had closed and only those lead mines which had unusually rich ores, or those containing considerable quantities of silver and gold continued to operate. The gold mines were still struggling against the adverse conditions brought about by the decreased purchasing power of their product. The end of 1921 was marked by a distinct, though slight, improvement in most of the metal mining district. Reduction in wage scales and the decreasing cost of supplies, together with small advances in the prices of the base metals, had a favorable effect. The improvement was rather slow until the latter part of 1922 when the marked increases in the prices of lead and zinc gave reason for belief in a steady and favorable ore market.

The slight increases shown in the production statistics, given elsewhere in this report, by no means indicate the greatly increased activity which is still continuing. The re-habilitation of mines which have been shut down takes time and the full effects of resumption have not yet been reflected in the production.

Pages 9 and 10

Smelting

Since June, 1921, the only operating lead smelters have been those at Leadville and Durango. Until recently there were only two or three furnaces operated at the Arkansas Valley Plant and one at the Durango Plant. Now there are four at the Arkansas Valley and two at Durango.

The Smelting Company, in co-operation with the Bulkeley Wells interest, is now erecting a sulphating plant at Durango to treat the complex concentrates from the Black Bear Mine at Telluride by what is commonly called the Coolbaugh process. This will remove the zinc and copper, leaving a lead residue which can be treated in the blast furnace. There is every reason to believe that this plant will be successful and that it will be enlarged to treat the ore from

other mines. This will render available large tonnages of zincy [fol. 339] ores that heretofore could not be mined and treated profitably.

During the past year several zinc oxide plants, which had been shut down for a year or two were started up. These are the Western Zinc Concentrating Company at Leadville, the Empire Zinc Company at Canon City, the River Smelting and Refining Company at Florence, and the United States Zinc Company at Pueblo.

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Conclusion

There are only two factors that are likely to check the present revival of Colorado's metal mining industry. One is a shortage of skilled miners and the other is the approaching expiration of the Pittman Act. The latter will, in all probability, cause the shutting down of a good many small silver mines which can make a little profit when silver is worth a dollar or more an ounce, but not when it is lower. It seems likely that there will be more mines developed which can produce other metals as well as silver and which will off-set those that depend on silver alone. The labor shortage is not yet acute, if it becomes so it may be a serious deterrent to increased production. We can only hope for the best.

On the whole the outlook is much more encouraging than it has been for several years. As expressed recently by Mr. George A. Stahl, President of the Colorado Metal Mining Association, "We have been stuck at the bottom of the hill; during 1922 we got going in low gear, this year we are intermediate, by 1924, we expect to be going over the crest in high.

[fol. 340] EXHIBIT 15-A—DOCKET 1572—DATED 7/13/23

Value of Mineral Production of Chaffee County, Colorado

	Gold	Silver	Copper	Lead	Zinc
1919	58,167	45,416	13,173	42,571	70,491
1920	31,483	39,572	5,179	31,930	22,942
1921	32,034	27,641	1,078	14,340	1,950
1922	20,031	26,187	2,700	35,860	10,089

Figures from the States Bureau of Mines.

[fols. 341–343] 21. Report and Order of the Commission, Sept 24, 1923

[fol. 344] 22. Petition of protestants for rehearing.

BEFORE THE INTERSTATE COMMISSION

Finance Docket No. 1572

In the Matter of the Application of the THE COLORADO AND SOUTHERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of its Buena Vista-Romley Branch Line of Railroad.

Petition for Rehearing

Come now all protestants herein, except the State of Colorado, by their attorneys, and present this, their application and petition, and move that the decision and order herein dated September 24, 1923, be vacated, reversed and set aside, and that a rehearing of this cause be granted, and for grounds allege:

1. That the said decision and order are contrary to the law applicable to the case.

2. That the Certificate of Public Convenience and Necessity ordered by the Commission is unlawful and beyond the power and authority of the Commission to grant or order insofar as it applies to intrastate commerce within the State of Colorado.

3. That said decision and order are contrary to the evidence in the case.

4. That said decision and order are contrary to the fair preponderance of the evidence in the case.

5. That the granting of the Certificate of Convenience and Necessity was against the evidence before the Commission; and that the granting of such Certificate was and is contradictory to the actual findings of fact made by the Commission and that the findings of fact made by the Commission are more favorable to the applicant than the evidence would warrant.

6. That the protestants did not have a fair chance to present the facts in the case at the hearing before the Examiner in Denver, Colorado, on July 13, 1923.

7. That the Commission, through its Examiner, erred in not postponing or continuing said hearing at the request of counsel for protestants (pp. 4 and 5 of the Record), and erred in compelling [fol. 345] protestants to proceed with the hearing without affording them a reasonable time in which to procure witnesses to testify at said hearing.

8. The Commission, through its Examiner, erred in refusing to permit the plaintiffs to show the value and profitableness of the Denver terminal facilities acquired and owned by the applicant company as a part of the line of railroad involved in the proceeding. (Record, pp. 45 to 47, inc.).

9. That protestants understood at the time of the hearing in Denver, July 13, 1923, that this was and would be a prosposed report case, and that the Commission erred in considering the same and deciding it in the absence of a prosposed report by the Examiner.

10. The Commission erred in not determining and fixing a reasonable time within which said order should take effect; that for the same to take effect thirty days from the date thereof would be disastrous, persons and property could not be removed and as a consequence absolute ruin would result to all property owners along the line because the expense of hauling machinery, stocks of merchandise and household furniture and effects out by overland transportation would be prohibitive as well as impossible, and it will be utterly impossible to get these articles ready for shipment within thirty days from the date of said order.

11. The Commission erred in finding and holding that a reasonable time elapsed between the rendition of the first opinion—July 28, 1923—and the filing of the second petition—May 19, 1923—within which protestants could show an improvement in operating conditions.

12. The Commission erred in holding and finding that "the case of protestants rests largely upon optimistic predictions and hopes." Such a finding is contrary to and contradictory of the findings of fact made by the Commission in its opinion of July 28, 1922, and the evidence now is that those conditions have not materially changed.

13. That since the hearing in this case, at least one of your petitioners, The Mary Murphy Gold Mining Company, has succeeded in finding a market for its zinc ores; a market which it has not had or been able to enjoy since 1919; that said market will be available to other mines on this line and will substantially increase the shipment of ores and will likewise increase the incoming freight, such as coal and mine supplies; that the availability of said market is evidenced by a copy of a letter hereto attached and marked Exhibit "A", and that petitioners desire to submit further proof concerning said market and the extent to which it will increase the amount of freight moving and to move over this line of railroad.

14. The Commission erred in holding and finding, in effect, that the abandonment of said line of railroad is within the charter powers of the applicant company, and erred in declining to give consideration to this phase of the case.

15. The Commission erred in holding that the burden rests upon protestants to submit definite evidence upon which a conclusion can be based as to when traffic could be developed to pay the costs of operations of said line of railroad.

16. The Commission erred in considering this line of railroad separate and apart from the other lines of the applicant company, [fol. 346] and separate and apart from the rest of the line of which it forms a part, and in declining or neglecting to give consideration to the business of the applicant as a whole.

17. The Commission erred in holding and finding that a railroad company operating under a charter which covers its entire system can abandon a portion of its system which it claims is unprofitable and retain those portions which are profitable, and in holding that the charter of the applicant company is unilateral, i.e., is binding in favor of the company as to all the benefits conferred but is void insofar as the obligations resulting therefrom are concerned.

18. The Commission erred in holding and finding from the evidence in this case that the continued operation of this line of railroad does or would constitute a burden on interstate commerce, because the record wholly fails to show that the applicant company is not making a fair return on the value of its properties either within the State of Colorado, or on its property as a whole.

19. The Commission erred in this: That it granted a Certificate of Public Convenience and Necessity without having first ascertained an determined the present fair value of applicant's properties, and, in the absence of such a finding, it cannot be said that the Company is not making a fair return on its property considered as a whole.

20 The Commission erred in granting a Certificate of Public Conveniences and Necessity authorizing the abandonment of intrastate service over which the Commission has no jurisdiction.

21. The Commission erred in finding and holding that there was evidence in the record that the applicant company had offered to lease the line of railroad involved in this proceeding; and erred in finding and holding that there was a duly or obligation on the part of protestants to accept said offer if made; and the Commission erred in giving any weight or consideration whatever to the alleged offer to lease said line.

22. That the decision and order of the Commission are arbitrary, unreasonable and unjust, and beyond the power or authority of the Commission to make or enter.

23. That the order and decision of the Commission are confiscatory of the property of the portestants in violation of the Fifth and Fourtheenth Amendments to the Constitution of the United States.

Wherefore, Protestants pray that the order and decision of the Commission be vacated, set aside and reversed, and that a rehearing of this said cause be granted and ordered, and that the effective date of said order be postponed pending a decision on this petition.

And for the consideration of the Commission in the event, and only in the event, it denies the foregoing petition for rehearing, protestants hereby petition the Commission for a modification of the

decision and order of the Commission herein, dated September 24, 1923, in the following respects and particulars, to-wit:

1. That the said decision and order be so modified as to show upon its face that it does not authorize or permit, and was not intended to authorize or permit, the tearing up or removal of the tracks of the line of railroad therein referred to.

2. That the said decision and order be so modified as to fix a [fol. 347] reasonable time limit when the same shall go into effect, and that such time limit be such as will be reasonably necessary for the dismantling and shipment of the property and effects of the people residing along and dependent upon the same for transportation facilities.

3. That the said decision and order be so modified as to show on its face that it is intended to permit the withdrawal of said line from the service of interstate commerce only, and that it does not apply to intrastate business.

4. That the decision and order be so modified as to permit a cessation of operations only, for a reasonable time, and that the Commission retain jurisdiction of the case so that when the abnormal conditions, now prevailing in the metal mining industry and in the business of the mines located along said line shall again be and become normal, the Commission can order a resumption of service.

Wherefore, Protestants pray for a modification of the order to the end that the rights of property owners along the line may be safeguarded and protected.

Respectfully submitted, Barney L. Whatley, Denver, Colorado; Thomas A. Nevens, Salida, Colorado; Harry W. Robinson, Denver, Colorado, Attorneys for Protestants.

[fol. 348] EXHIBIT A TO PETITION FOR REHEARING

The Sherwin-Williams Co.,

Cleveland, Ohio

October 1, 1923.

Mr. George E. Collins, The Mary Murphy Gold Mining Co., 307 Boston Building, Denver, Colorado.

DEAR SIR: Our smelter reports that the sample which you submitted from the Mary Murphy Gold Mining Company contains Zinc, 27.8; Lead, 14.1 (wet).

This ore would be very satisfactory for our process and we will be pleased to offer you $20.50 per ton F. O. B. Coffeyville, Kansas, for 40% zinc and lead combined, the lead to be wet assay less 1½%, the unit variation to be 70¢ up or down.

If this offer meets your approval, kindly make shipment to The Ozark Smelting & Mining Company, Coffeyville, Kansas, and sent to that point the original Bill of Lading with copy to this office.

This agreement would be good for shipments made up to December 31st, providing you advise promptly your acceptance.

Very truly yours The Ozark Smelting & Mining Company.
Oliver Box General Superintendent.
cc WEC. OB:HC.

[fol. 349] Petition of the State of Colorado for a Rehearing:

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1572

In the Matter of the Application of THE COLORADO AND SOUTHERN RAILWAY COMPANY for a certificate of Public Convenience and Necessity Authorizing the Abandonment of its Buena Vista-Romley Branch Line of Railroad.

Petition for Rehearing.

The State of Colorado, by its Attorney General, respectfully presents this its application and petition for a rehearing of the above entitled matter, and petitions that the decision and order of the Commission therein, dated September 24, 1923, be vacated and set aside and that a rehearing thereof be granted, and for ground alleges:

1. That petitioner was duly admitted into the Union of the United States of America in the year 1876; that it has since been continouously, and is now, a State of the United States of America, and that it was so admitted on an equality with other states in all respects whatsoever.

2. That in the Constitution of the United States of America, no power of police or legislation with respect to the internal affairs and intrastate commerce of Colorado is delegated to the National Government.

3. That among the powers reserved to the States, and to your petitioner, are the right to regulate intrastate commerce, and all the service, rates, fares, charges and contracts relative thereto entered into or made effective within this State, and the right to regulate private corporations and combinations and restrictions in trade and commerce in intrastate commerce.

4. That under its Constitution and various statutes, the State of Colorado has exercised the powers reserved to it as aforesaid.

That in the Constitution of the State of Colorado provision is made for the incorporation of railroad companies; all such companies are made public highways and common carriers, and are given the right to construct and operate a railroad between designated points within the State; the Constitution of the State of Colorado further provides that all individuals, associations and corpora-

tions shall have equal rights to have persons and property transported over any railroad in the State, and no undue or unreasonable discrimination shall be made in charges or in facilities for trans-
[fol. 350] portation of freight or passengers within the State; and said Constitution further provides that the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State; that the general assembly of the State shall have power to alter, revoke or annul any railroad charter whenever in their opinion it may be injurious to the citizens of the State.

5. That under its Constitution, the State of Colorado has enacted a full and complete code of laws relating to railroad and common carriers, corporations, trusts and monopolies.

That said laws make provision, among other things, for the filing of a Certificate of Incorporation and the contents thereof, and define the powers of such corporations, and make provision for the organization and government thereof; that among the powers so conferred upon railroad corporations is the power of eminent domain, the power to connect at the State line with the railroads of other States, the power to receive and convey persons and property on its railway, to borrow money, etc. That the term of existence of railroad corporations is fifty years.

That in addition to the foregoing general provisions, The State of Colorado has enacted a general code of laws concerning all public utilities and has created a public utilities commission with full power and authority to supervise public utilities and enforce the laws of the State of Colorado with reference thereto; that in and by said laws, it is made the duty of every railroad company, and of this applicant, to furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and shall in all respects be adequate, efficient, just and reasonable, and under and by said laws railroad corporations are prohibited from discontinuing railroad service without first applying to and receiving from said Public Utilities Commission a Certificate of Public Convenience and Necessity authorizing the same.

6. That on December 19, 1898, the State of Colorado granted to The Colorado and Southern Railway Company a charter under and in pursuance of its said laws; that by said charter the State granted to said company various and sundry rights, powers and privileges, including the power of eminent domain, all of which were so granted to it upon condition that it comply with the terms of its charter, and all laws applicable to rates, fares, charges, classifications, regulations, practices and service prescribed by laws of the State or by agencies of the State, and that the charter so conditioned and so granted was accepted by the said The Colorado and Southern Railway Company and is now a contract binding upon said corporation and its successors. That under and by said charter contract the applicant company was given the power, and agreed on its part, to purchase, maintain

and operate for and during the period of fifty years from the date thereof, the line of railroad involved in this proceeding; that pertinent extracts from the Certificate of Incorporation of said company are hereto attached, marked Exhibit A.

[fol. 351] 7. That one of the conditions upon which said contract and charter was granted and accepted as aforesaid was that said Railway Company would operate its several lines of railroad in the State of Colorado in accordance with the laws of the State and be governed by the laws, regulations and practices prescribed by the State, and that the State of Colorado has not consented to the abrogation of such obligation, contract and charter, nor has the Public Utilities Commission of said State consented thereto.

8. That the order of the Commission made and entered herein on the 24th day of September, 1923, impairs the obligation of the contract so made and accepted by the State of Colorado and The Colorado and Southern Railway Company, and is violative of the contract rights of the State of Colorado and in contravention of the Fifth Amendment to the Constitution of the United States, and in violation of the Constitution and laws of the State of Colorado.

9. That the said order of the Commission is confiscatory of the contract rights of the State of Colorado, and in violation of the Fourteenth Amendment to the Constitution of the United States.

10. That the said order of the Commission is beyond the power and authority of the Commission to make, insofar as it purports to permit the abandonment of intrastate service, for the reason that the obligation of the Railway Company to perform and render intrastate service results from the obligation of its contract; that such obligation on the part of said railway company is a justiciable question involving the rights of the sovereign State of Colorado, and the Commission has no authority to determine a justiciable question when the rights of a State are involved.

11. That the order of the Commission made herein is beyond the power and authority of the Commission to make insofar as it applies or was intended to apply to intrastate commerce, and that the Congress of the United States has not granted, and has no power to grant, to this Commission the power and authority to authorize the abandonment of railroads chartered under the laws of the State of Colorado and engaged in its intrastate commerce.

12. That the Commission erred in not giving consideration to the business of the Colorado and Southern Railway Company as a whole and in limiting its investigation to the Buena Vista-Romley line, the said line being only a small portion of the company's system.

13. The Commission erred in granting, if it has granted, authority to the applicant company to tear up its tracks. The matter of tearing up tracks or the physical location of the property of applicant, is a matter of purely local concern and can have no bearing on interstate commerce.

14. That the Commission erred in that it has fixed no effective date for the order and no time limit within which the people residing along this line of railroad may move their property, and as a consequence the people will probably be compelled to haul their goods, effects and property, and move their families, over rough mountain roads for long distances and at exhorbitant and unreasonable expense and endure undue burdens and hardships.

[fol. 352] Wherefore, The State of Colorado moves the Commission that a rehearing be granted in this matter and that the decision and order of the Commission dated Sept. 24, 1923, be vacated and set aside and that the order and decision of July 28, 1922, be reinstated and enforced, and that the order of September 24, 1923, be stayed and that said railway company be not permitted to abandon said service or tear up its tracks during the pendency of this application, or at all.

In the event the Commission denies the foregoing petition for rehearing, the State of Colorado requests and petitions that the order of the Commission be modified as follows:

1. That it be modified so as to show on its face that it does not authorize the tearing up or removal of the tracks without the consent of the State of Colorado and its Public Utilities Commission.

2. That it be so modified as to permit the abandonment of service as to interstate commerce only.

3. That it be so modified as to postpone the effective date thereof for such a reasonable time as will enable the inhabitants of the area served to find other habitations and remove their effects.

Respectfully submitted, The State of Colorado, by Russell W. Fleming, Attorney General of the State of Colorado. R. R. Cloud, Assistant Attorney General.

[fol. 353] EXHIBIT A TO PETITION OF THE STATE OF COLORADO FOR REHEARING

Certificate of Incorporation of the Colorado and Southern Railway Company

Know all men by these presents, That we, the undersigned, Elmer E. Whitted, Alexist Dupont Parker, John S. MacBeth, Thomas F. Dunaway and B. L. Winchell, all residents of the City of Denver and State of Colorado, desiring to associate ourselves together under and in pursuance of the provisions of the laws of the State of Colorado relating to the formation of corporations, and to form a company thereunder for the purposes set forth in the following certificate, do make, sign and acknowledge this certificate of incorporation, and do state and declare as follows, to-wit:

First. The corporate name of this company shall be the Colorado and Southern Railway Company.

Second. This company is organized and created for the following objects and purposes, to-wit:

To purchase, maintain, operate, extend and complete the railroads and telegraph lines formerly owned and possessed by the Denver, Texas and Gulf Railroad Company and by the Denver, Texas and Fort Worth Railroad Company, * * * and the railroads and telegraph lines formerly owned and possessed by the Union Pacific, Denver and Gulf Railway Company * * *

Also to purchase, maintain, operate, extend and complete the railroads and telegraph lines formerly owned and possessed by the Denver, Leadville and Gunnison Railway Company * * *

Also to acquire and purchase the property and franchises so sold and conveyed, and to take, hold, exercise and enjoy all the estate, franchises, rights, powers and privileges, claim or demand, in law or equity, of said the Denver, Leadville and Gunnison Railway Company, whose property and franchises have been so sold and conveyed as aforesaid; the railroads so sold and conveyed as aforesaid, are more particularly described as follows, to-wit:

* * * * * * *

Said railroads formerly of said The Denver, Leadville and Gunnison Railway Company, and so sold and conveyed as aforesaid, are, so far as the same have heretofore been constructed, particularly described as follows:

Beginning at a connection with the Union Depot tracks, Denver, Colorado; thence in a general southerly and westerly direction, through Arapahoe, Jefferson, Douglas, Park, Summit and Lake Counties, following the North Fork of the South Platte River to [fol. 354] Kenosha Summit, through the towns of Buffalo, Pine Grove, Grant and Webster; thence along the northerly edge of South Park to Como, thence up Tarryall Creek to Breckenridge Pass; thence down the Blue River and through the town of Breckenridge to Dickey; thence up Ten-Mile Creek to Fremont or Alicante Pass, and thence to end of track at 5th Street in the City of Leadville, a distance of about 151.20 miles.

Beginning at Como, on the main line from Denver to Leadville, 88.22 miles from Denver, thence in a general south-westerly direction through the Counties of Park, Chaffee and Gunnison, following down Trout Creek to Garos and over the divide between the South Platte and Arkansas Rivers, to the crossing of the Arkansas River at the mouth of Chalk Creek; thence up Chalk Creek to Alpine Pass; thence down Quartz Creek to Gunnison River; thence down the Gunnison River to the town of Gunnison; thence up Ohio Creek to Castleton; thence to end of track at Baldwin Mines, a distance of about 131.05 miles.

* * * * * * *

To borrow money and to execute and issue its bonds and other securities therefor, and to mortgage its property and franchise as security for such bonds or other obligations; to exercise the right of eminent domain * * *; to do any act or transact any business which common carriers of persons and property may lawfully do, and, generally, to have all the powers granted to or acquired by railway or railroad companies by, under or in pursuance of the laws of the State of Colorado.

Third. The term of the corporate existence of this company shall be fifty (50) years from the date of the filing of this certificate in the office of the Secretary of State of the State of Colorado, and its corporate existence may be renewed in such manner and for such periods as may be authorized by the laws of said State.

Filed in office of Secretary of State of the State of Colorado, Dec. 19, 1898.

[fol. 355] 24. Order of the Commission for further argument:

Order

At a General Session of the Interstate Commerce Commission Held at Its Office in Washington, D. C., on the 12th Day of November, A. D. 1923.

Finance Docket No. 1572

In the Matter of the Application of THE COLORADO & SOUTHERN RAILWAY COMPANY for a Certificate of Public Convenience and Necessity Authorizing it to Abandon a Branch Line of Railroad.

Upon further consideration of the record in the above entitled proceeding, of the petitions for rehearing filed by the State of Colorado, and by the other protestants, and of the reply of the applicant to said petitions:

It is ordered, That said proceeding be, and it is hereby, reopened for further argument before the commission at its office in the city of Washington, D. C., at 10:30 o'clock A. M., on the 1st day of December, 1923.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 356] 25. Report and order of the Commission, as follows:

[fol. 357] INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1572

Abandonment of Branch Line by COLORADO & SOUTHERN RY.

Submitted December 1, 1923. Decided February 11, 1924

1. On further argument, findings in former report, 82 I. C. C., 310, affirmed.

2. Amended certificate issued authorizing the Colorado & Southern Railway Company to abandon a branch line of railroad in Chaffee County, Colo.

E. E. Whitted, J. Q. Dier, and Bruce Scott for applicant.
Barney L. Whatley and Thomas A. Nevens for certain protestants.
Harry W. Robinson for Mary Murphy Gold Mining Company, protestant.
Russell W. Fleming, attorney general, and R. R. Cloud, assistant attorney general, for State of Colorado.

Report of the Commission on Further Argument

By the Commission:

This proceeding has been before us on two former occasions. By our report and order issued July 28, 1922, 72 I. C. C., 315, we denied the application of the Colorado & Southern Railway Company for authority to abandon its branch line extending from Buena Vista to Romley, in Chaffee County, Colo., including certain trackage extending westerly from Romley, a total distance of 29.42 miles. While the record, as then made, disclosed that the line had been operated at a large loss for several years, the testimony of the protestants was to the effect that developments in progress would result in a substantial traffic increase within a short time. In our report we stated that the applicant might renew its application if the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time. On May 19, 1923, the applicant filed a petition for further hearing. The petition was granted and a further hearing held, at which it clearly appeared that the improvement in operating results anticipated by the protestants at the first hearing had not materialized, and that, in the interval between the two hearings, the traffic and revenue had shown a continued and progressive decrease. On September 24, 1923, we issued a report and certificate authorizing the applicant to abandon the line, 82 I. C. C., 310. The State of Colorado, by its attorney general, and the other protestants filed petitions for a rehearing, and an order was entered assigning the proceeding for further argument. The material facts are stated in our former reports.

The State of Colorado summarizes its position as follows: That the applicant is operating under a charter granted by the State of Colorado; that such charter is a contract with the State; that the applicant can not, except in violation of its contract, abandon a portion of its system within the State without the latter's consent; that the transportation act of 1920 does not and was not intended to take [fol. 358] from the State its right, in the exercise of its police power, to regulate and control the intrastate operations of railroads chartered by it; that the rights of the State and the applicant under this charter contract are justiciable questions, and that a justiciable question involving the rights of a sovereign State, can only be settled by a court of competent jurisdiction under the Constitution of the United States, and that this commission is not such a court. If its petition for rehearing be denied the State asks that the certificate be modified to show on its face that it does not authorize the tearing up or removal of the tracks without the consent of the State and its public utilities commission; to permit the abandonment of service as to interstate commerce only; and to postpone the effective date thereof for such reasonable time as will enable the inhabitants to find other habitations and to remove their effects.

The petition filed by the other protestants alleges that they did not have a fair chance to present their evidence before the examiner; that since our certificate was issued the market for complex ores has improved, and that this will increase the traffic; that consideration should have been given to the business of the applicant as a whole and not to the business of the branch line alone; that we should not authorize the abandonment as to intrastate service; that error was committed in considering and alleged offer of lease of the line; that a reasonable time for the effective date of the certificate should have been fixed, and that the statutory time of 30 days is not a reasonable time. These protestants also ask that, if their petition be denied, the certificate be modified as requested by the State, with a further modification to permit a cessation of operations for a reasonable time only, and that we retain jurisdiction to order resumption of service when the claimed abnormal conditions now prevailing in the metal mining industry become normal.

From January 1, 1916, to May 31, 1923, the operating results of the branch line were: Operating revenues, $88,588.04; operating expenses, $236,185.04; taxes, $157,244.35. The record does not show how much the applicant's taxes would be reduced through the proposed abandonment. Eliminating the item of taxes, the deficit in net operating revenues was $147,597. Practically all of the operating expenses, excepting superintendence, are direct charges to the branch line. The operating revenues decreasd from $25,507.68 in 1916 to $5,813.91 in 1922, and $1,788.18 for the first five months of 1923. The number of passengers carried decreased from 3,711 in 1916 to 725 in 1922, and 185 in the first five months of 1923. The record does not contain any assurance that future operations would show a more favorable result.

The applicant's net railway operating income for 1921 and 1922 was $1,903,793.39 and $1,061,877.35, respectively. For the first 11

months of 1923 it was $664,723, as shown by its monthly reports filed with us.

The protestants contend that paragraphs (18) to (21), inclusive, of section 1 of the act, in so far as they may attempt to confer exclusive jurisdiction upon us to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado and engaged in its intrastate commerce, are unconstitutional. The case of Texas v. Eastern Texas R. R. Co., et al., 258 U. S. 204, is relied upon to support such contention. In our opinion the conclusion therein reached does not apply to the facts in the present case. The applicant's lines are not located and doing business wholly within the State of Colorado. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, [fol. 359] and it is required to bear or make good the deficits from such operation. It clearly appears that, in the language of the Supreme Court in the case above cited, the large losses sustained in operating the branch line "would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce." We are of opinion that we have jurisdiction.

It is argued that the applicant's charter constitutes a contract between it and the State of Colorado, and that, therefore, it can not abandon the branch line without the consent of the State. That is a question for the courts to decide.

The applicant has offered to lease the line to the protestants at a nominal rental of $5 a year, provided they will operate it, and pay the operating expenses and taxes. The acceptance of this offer would enable the protestants to operate the line as an industry track or in any other manner acceptable to the State authorities. Our certificate herein will provide that it shall take effect and be in force from and after six months from the date it is issued.

Upon the facts presented we affirm the findings in our former report, 82 I. C. C., 310, and find that the present and future public convenience and necessity permit the abandonment by the applicant of the branch line of railroad in question. A certificate to that effect will be issued.

EASTMAN, Commissioner, dissenting in part:

I agree that the conditions surrounding the line in question are such that public convenience and necessity do not require its continued operation, but I believe that our certificate should in terms be restricted to abandonment in interstate and foreign commerce.

In Texas v. Eastern Texas R. R. Co., 258 U. S., 204, the Supreme Court considered a similar certificate which we had issued permitting the abandonment of the Eastern Texas Railroad. The carrier had construed this certificate as permitting abandonment in intrastate as well as interstate and foreign commerce. At pages 216-7 of its opinion, the court says:

The road lies entirely within a single State, is owned and operated by a corporation of that State, and is not a part of another line. Its

continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.

Referring to the transportation act and the interstate commerce act, the court states, at page 217, that "As a whole these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to [fol. 360] refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce." The court's conclusion, at page 218, is:

These considerations persuade us that the paragraphs in question should be interpreted and read as not clothing the Commission with any authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business.

Dealing with the analogous matter of intrastate rates in Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563, the Supreme Court makes this statement, at page 590:

It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.

From these decisions I take it that where a line of railroad is situated, like the Eastern Texas, wholly within a single State and is not a branch or extension of a line operating between two or more States, we can not lawfully authorize its abandonment in intrastate commerce. Where it is such a branch or extension, however, we may lawfully authorize its abandonment in intrastate commerce, provided it clearly appears that its continued operation in such commerce will burden interstate and foreign commerce. That the effect upon the latter commerce must be substantial, and not trivial

or relatively unimportant, is indicated by the words "burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce," which appear in the Eastern Texas decision, and also by the analogous statement in the Wisconsin case that there must be "a substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce."

Congress intended no ruthless invasion of state authority, but only such incidental exercise of power as might be necessary to protect interstate commerce from substantial injury. Our certificate, therefore, should be restricted in this instance to abandonment in interstate and foreign commerce, unless we are prepared to find as a fact that the continued operation of this line in intrastate commerce will produce such injury. As nearly as I can determine, total abandonment will save applicant not more than $30,000 a year as a maximum, I am wholly unable to reach the conclusion that such a burden, if continued, would "cripple" applicant's main line or "affect its utility or service as an artery of interstate and foreign commerce," or that it would operate as an "obstruction to" interstate commerce. Interstate users of applicant's other lines, in my opinion, will enjoy no better rates and no better service when this branch is abandoned. If its operation burdens [fol. 361] interstate commerce, it is a burden whose removal shippers will not be able to detect.

It impresses me as of the utmost importance that we should exercise power over intrastate commerce only in clear cases, where there is some real peril to interstate commerce, and this is not such a case. For that reason, while I believe that public convenience and necessity do not require the operation of the line in question, I am persuaded that our certificate should be restricted to interstate and foreign commerce, and that applicant should seek relief as to intrastate commerce from the State of Colorado. I am authorized to state that Commissioners Campbell and Cox concur in this expression of dissent.

Commissioners McChord and McManamy also dissent.

Amended Certificate of Public Convenience and Necessity

Issued February 11, 1924

A further argument and investigation of the matters and things involved in this proceeding having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, that the present and future public convenience and necessity permit the abandonment by the Colorado & Southern Railway Company of the branch line of railroad in Chaffee County, Colo., described in the application and report aforesaid.

It is ordered, That the Colorado & Southern Railway Company,

when filing schedules canceling tariffs applicable on said branch line, shall in such schedules make specific reference to this certificate by title, date, and docket number.

It is further ordered, That this certificate shall take effect and be in force from and after six months from the date of its issue, and shall replace the certificate of public convenience and necessity issued September 24, 1923, in this proceeding.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 362] Whereupon, and to further maintain the issues on behalf of the plaintiff herein raised by the pleadings, the plaintiff offered, and the Court duly received in evidence, Plaintiff's Exhibit "B," same being a certified copy of the Articles of Incorporation of The Colorado & Southern Railway Company, and all amendments thereof, duly certified by the Secretary of State of the State of Colorado, and under the Great Seal of the State, under date of August 7th, 1924.

Omitting the formal certificates, said Exhibit is as follows:

Certificate of Incorporation of the Colorado and Southern Railway Company

Know all men by these presents that we, the undersigned, Elmer E. Whitted, Alexis Dupont Parker, John S. Macbeth, Thomas F. Dunaway and B. L. Winchell, all residents of the City of Denver and State of Colorado, desiring to associate ourselves together under and in pursuance of the provisions of the laws of the State of Colorado relating to the formation of corporations, and to form a company thereunder for the purposes set forth in the following certificate, do make, sign and acknowledge this certificate of incorporation, and do state and declare as follows, to-wit:

First. The corporate name of this company shall be The Colorado and Southern Railway Company.

Second. This Company is organized and created for the following objects and purposes, to-wit:

To purchase, maintain, operate, extend and complete the railroads and telegraph lines formerly owned and possessed by The Denver, Texas and Gulf Railroad Company and by The Denver, Texas and Fort Worth Railroad Company, each a corporation organized and existing under the laws of the State of Colorado, and the railroads and telegraph lines formerly owned and possessed by The Union Pacific, Denver and Gulf Railway Company, a corporation organized and existing under the laws of the State of Colorado, and into which said The Denver, Texas and Gulf Railroad Company and said The Denver, Texas and Fort Worth Railroad Com-[fol. 363] pany had, with other corporations, been consolidated, which have been sold and conveyed pursuant to a judgment and decree made by the Circuit Court of the United States for the Dis-

trict of Colorado, a court of competent jurisdiction, and entered on the thirteenth day of September, 1898, in a consolidated cause pending in said court, for the foreclosure of the three certain deeds of trust or mortgages hereinafter described, between the American Loan and Trust Company, Trustee, complainant and The Union Pacific, Denver and Gulf Railway Company, and The Mercantile Trust Company, Trustee, respondents; The Mercantile Trust Company, Trustee, complainant, and The Union Pacific, Denver and Gulf Railway Company and the American Loan and Trust Company, Trustee, respondents; The Mercantile Trust Company, Trustee, complainant, and The Union Pacific, Denver and Gulf Railway Company and the American Loan and Trust Company, Trustee, respondents; and under and by virtue of the power and authority contained in a certain deed of trust or mortgage, bearing date April 1, 1887, made to said The Mercantile Trust Company by said The Denver, Texas and Gulf Railroad Company, and under and by virtue of the power and authority contained in a certain deed of trust or mortgage bearing date November 1, 1887, made to said The Mercantile Trust Company by said The Denver, Texas and Fort Worth Railroad Company, and under and by virtue of the power and authority contained in a certain deed of trust or mortgage bearing date April 1, 1890, made to the said American Loan and Trust Company by said The Union Pacific, Denver and Gulf Railway Company;

Also to acquire and purchase the property and franchises so sold and conveyed, and to take, hold, exercise and enjoy all the estate, franchises, rights, powers and privileges, claim or demand, in law or equity, of said The Denver, Texas and Gulf Railroad Company, said The Denver, Texas and Fort Worth Railroad Company and said The Union Pacific, Denver and Gulf Railway Company, whose property and franchises were so sold and conveyed; said railroads so sold and conveyed as aforesaid, are more particularly described as follows, to wit:

A main line beginning at a point in 16th street, Denver, Colorado, and running thence in a general southerly direction through the City of Denver, and through the counties of Arapahoe, Douglas, Elbert, El Paso and Pueblo, to a connection with the main line of the Denver and Rio Grande Railroad at Bessemer Junction, Colorado, a distance of about 128 miles; also beginning at a point on the La Veta branch of the Denver and Rio Grande Railroad known as Walsenburg Junction, Colorado, running thence southerly through the City of Wallenburg and through the counties of Huerfano and Las Animas to a point on the boundary line between the State of Colorado and the Territory of New Mexico, a distance of about 92.90 miles, and continuing thence southeasterly through Union County in New Mexico to a point on the boundary line of Texas and New Mexico, a distance of about 83.29 miles;

A branch beginning at Manitou Junction, Colorado and running thence in a westerly direction to Colorado Springs, Colorado, a distance of about 9.12 miles;

A branch beginning at Franceville Junction, Colorado, and run-

[fol. 364] ning thence in a northeasterly direction, to Franceville Mines, Colorado, a distance of about 4.51 miles;

A branch beginning at Acme Junction, Colorado, and running thence westerly to Aguilar, Colorado, a distance of about 2.51 miles;

A branch beginning at Ludlow, Colorado, and running thence westerly to Hastings, Colorado, a distance of about 2.97 miles;

A branch beginning at said Ludlow, Colorado, and running thence southerly and westerly to Berwind, Colorado, a distance of about 3.21 miles;

A branch beginning at Chicosa Junction, Colorado, on the Denver and Rio Grande Railroad, and running thence southwesterly to Forbes Junction, Colorado, a distance of 1.16 miles, together with a right of way from Forbes Junction westerly to Forbes Mines, a distance of about 3 miles;

A branch beginning in the City of Trinidad, Colorado, and running thence southwesterly through said City of Trinidad and the County of Las Animas, Colorado, and through Colfax County in New Mexico to Catskill, New Mexico, and thence northwesterly up and along the Red River to Vasquez, New Mexico, a distance of about 39.43 miles;

A line beginning at said Catskill and running southwesterly down and along the Red River to Newton's Mill, New Mexico, a distance of about 9.25 miles;

A branch beginning at a point on the Maxwell branch and running thence easterly to Sopris Mine, Colorado, a distance of about 66 miles;

A branch beginning at Beshoar, Colorado, and running thence southerly to Gray Creek Mines, Colorado, a distance of about 7.85 miles;

A line beginning at East Denver, Colorado, and running thence in a general westerly direction through the counties of Arapahoe, Jefferson, and Clear Creek to Georgetown, Colorado, a distance of about 49.73 miles;

A line beginning at Forks of Creek, Colorado, and running thence northwesterly through Gilpin County to Black Hawk, Colorado, a distance of about 8.22 miles, and a branch of said line beginning at a point near the Eagle Mill, and running thence to Central City, Colorado, a distance of about 3.59 miles;

A line beginning at Louisville Junction, Colorado, and running thence in a northerly direction through the counties of Boulder and Larimer, to Fort Collins, Colorado, a distance of about 54.88 miles;

A line beginning on the main line of the Denver Pacific Railway at La Salle, Colorado, and running thence easterly through the counties of Weld, Morgan, Washington, Logan and Sedgwick to Julesburg, Colorado, a distance of about 151.53 miles;

[fol. 365] A line beginning at a point in Golden, Colorado, and running thence in a northerly direction up Tucker's Gulch to Church's Brick Yard, a distance of 1.66 miles, with a right of way extending from a connection with Church's Brick Yard spurs westerly to Ralston and Glencoe, on Ralston Creek, a distance of about 7.49 miles;

A line beginning at Georgetown, Colorado, and running thence in a westerly direction to Silver Plume, Colorado, a distance of about 4.78 miles, together with a right of way and roadbed from Silver Plume westerly to Graymont, a distance of about 3.80 miles;

A line beginning at Argo Junction, Colorado, running thence northwesterly through the counties of Arapahoe, Jefferson and Boulder, to a point in Water Street, Boulder, Colorado, a distance of about 26.79 miles;

A line beginning at Louisville, Boulder County, Colorado, and running thence easterly to Gladstone Mine, Lafayette, Colorado, a distance of about 3.78 miles;

A line beginning at Greeley, Colorado, and running thence westerly through the City of Greeley and the counties of Weld and Larimer to Fort Collins, Colorado, a distance of about 24.65 miles;

A line beginning at said Fort Collins, and running thence westerly through Larimer County to Stout, Colorado, a distance of about 14.94 miles;

A line beginning at Loveland, Larimer County, Colorado, and running thence northwesterly to Arkins, Colorado, a distance of about 8.24 miles;

A line beginning on said main line at Mile Post 27.64, and running thence southerly to a connection with the Denver and Boulder Valley Main Line, .18 miles, and also beginning at a connection with the Denver and Boulder Valley Railroad, and running thence westerly through the City of Boulder, Colorado, to a connection with the Colorado and Northwestern Railway at Boulder Creek, a distance of about 1.85 miles;

A line beginning at Cheyenne, Wyoming, and running thence westerly through the City of Cheyenne and northerly through the counties of Laramie and Converse, Wyoming, to a connection with the main line of the Fremont, Elkhorn and Missouri Valley Railroad at Orin Junction, Wyoming, a distance of about 153.68 miles;

A line beginning at Davidson Junction in Boulder County, Colorado, and running thence westerly to Allan Bond Mine, a distance of about 3.24 miles;

A line beginning on the main line of the Denver, Leadville and Gunnison Railway, near Bank Avenue, Denver, Colorado, and running thence northerly along the westerly bank of the South Platte River to a connection with the former main line of the Colorado Central Railroad, in the said City of Denver; beginning again at a point on the main line of the Colorado Central Railroad in the south line of Dakota Street, Viaduct Addition to the City of Denver, produced, and running thence northeasterly to a junction with the [fol. 366] Jersey cut-off, near the Union Stock Yards, in said city, a distance of about 4.85 miles;

A line beginning on the former main line of the Colorado Central Railroad, 250 feet west of the north and south centre line of Section 9, Township 3, S. R. 69 W., in the County of Arapahoe, Colorado, in the southwest ¼ of said section, and running thence southeasterly to a junction with the Denver Pacific tracks, in the town of Elyria, a distance of about 3.08 miles;

Also to purchase, maintain, operate, extend and complete the railroads and telegraph lines formerly owned and possessed by The Denver, Leadville and Gunnison Railway Company, a corporation organized and existing under the laws of the State of Colorado, which have been sold and conveyed pursuant to a judgment and decree of the Circuit Court of the United States for the District of Colorado, a court of competent jurisdiction, made on the sixth day of August, 1898, in a cause pending in said court, for the foreclosure of the deed of trust or mortgage, hereinafter described, between the American Loan and Trust Company, complainant, and The Denver, Leadville and Gunnison Railway Company, The Union Pacific Railway Company, Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, as Receivers of the property and assets of the said The Union Pacific Railway Company, The Denver, South Park and Pacific Railroad Company, The Union Depot and Railroad Company and William A. Deuel, President of The Union Depot and Railroad Company and Trustee of The Union Pacific Railway Company, and under and by virtue of the power and authority contained in a certain deed of trust or mortgage bearing date the first day of August, 1889, executed by said The Denver, Leadville and Gunnison Railway Company to said American Loan and Trust Company;

Also to acquire and purchase the property and franchises so sold and conveyed, and to take, hold, exercise and enjoy all the estate, franchises, rights, powers and privileges, claim or demand, in law or equity, of said The Denver, Leadville and Gunnison Railway Company, whose property and franchises have been so sold and conveyed; the railroads so sold and conveyed as aforesaid, are more particularly described as follows, to-wit:

All that line of railway in the State of Colorado extending from the City of Denver to Morrison at the Bear Creek Canon, and also to and through the Platte Canon and by the most feasible route to the South Park, and thence to or near the town of South Park and to the Salt Springs, and thence across the valley of the Arkansas River and through the Poncha Pass and across the San Luis Valley to or near the town of Del Norte and thence by the most feasible route to the San Juan mining district in southwestern Colorado, and thence to the Pacific Ocean, with branches to Morrison and to Summit County, and thence by way of the Middle Park to the Pacific Ocean, and also to Dudley and Horshoe, and to the head of the Arkansas Valley in Lake County, in the said State; and also an extension of the said railway starting from the most eligible point on the line of said railway in the valley of the Arkansas River, and running thence by the most feasible route over the Saguache Range of [fol. 367] Mountains to the confluence of the Quartz Creek and the Tomichi River, and thence down the valley of said Tomichi River to the Gunnison River, and thence by the most feasible route to Ouray, on the Uncompahgre River, with a branch to Lake City and with a branch running up the Ohio Creek to the coal and silver mining districts in the Elk Mountains; and also an extension of the said railway from the most eligible and feasible point on the Ouray ex-

tension of said railway in the Uncompahgre Valley and thence by the most eligible and feasible route by the way of the waters of the San Miguel River and the Dolores River, thence to a point on the western boundary line or the southern boundary line of Colorado, and within a distance of twenty miles from the southwestern corner of said State, this extension to be designated as the Arizona Extension of said railway; and also an extension of the said railway from the terminus of the branch thereof which runs up Ohio Creek to the Elk Mountains coal fields, and thence by the most feasible route down the North Fork of the Gunnison River to the Grand River, and thence by the most eligible and feasible route to the western boundary line of the State of Colorado, with a branch from the most feasible point on the line of said railway to and down the Roaring Fork of the Grand River, this extension or branch or branches of said railway to be designated as the Utah Extension of said railway; and also extensions and branches of said railway in the same State from some eligible point or points on the line or lines or branches of the said railway or from Denver to Colorado Springs, Canon City, Silver Cliff and Rosita in the several counties of Arapahoe, Jefferson, Douglas, Park, El Paso, Pueblo, Fremont and Custer, and connecting the lines of the said railway and branches at a point or points by a branch or branches with the main line or other branches of said railway; and also a branch of said railway from a point on the Tomichi River up and along and near to Cochetopa Creek by the most eligible route in the counties of Gunnison and Saguache to the town of Saguache; and also a branch from the line of the said road on Ohio Creek by the most eligible route to Crested Butte in Gunnison County and extending the Dudley Branch of said railway by way of the Hoosier Pass to the town of Breckenridge through the counties of Park and Summit; and also all that line of railway or railways in the State of Colorado, extending from some point on the aforesaid railway in the county of Summit, by way of Eagle and Grand River Valleys, to Glenwood Springs in the County of Garfield, and thence by the most feasible route to the western boundary line of the State of Colorado; and also all that line of railway in the same State, extending from the valley of the South Platte River by way of Tarryall Creek and the town of Fairplay and Weston's Pass (or Sacramento Creek) and Leadville, in the County of Lake, to Aspen, in the County of Pitkin, and thence westward to or near Glenwood Springs; and also all that line of railway from Como in Park County, by Boreas to Breckinridge, and on to Keystone by Dillon, in Summit County, and thence up the valley of the Snake River, over Loveland Pass or Argentine Pass, to Graymont and Georgetown, in Clear Creek County, and from Dillon, in Summit County, down the valley of the Blue River to its mouth, and thence [fol. 368] across the valley of the Grand River to the valley of Muddy Creek and to the valley of Troublesome Creek, and thence up one or both of said valleys to the Muddy Pass near Whitley's Peak, and thence, by the most feasible route, to the North Park and a connection with The Union Pacific Railway, and from the mouth of the Blue River in the Grand River Valley, by the most feasible route,

to the western and northern boundaries of the State and to or near Dotson in the Grand River Valley; also a line of railway from the town of Gunnison to the western boundary line of the State of Colorado; also from a point at or near the town of Schwanders by way of the valley of the Arkansas River to the city of Leadville, Colorado; also from a point in the Gunnison River Valley, by the most feasible route, to the coal fields in Gunnison County, Colorado; also from a point in the Gunnison River Valley, by the most feasible route, to the towns of Lake City and Silverton, Colorado, in San Juan County;

Said railroads formerly of said The Denver, Leadville and Gunnison Railway Company, and so sold and conveyed as aforesaid, are, so far as the same have heretofore been constructed, particularly described as follows:

Beginning at a connection with the Union Depot tracks, Denver, Colorado; thence in a general southerly and westerly direction, through Arapahoe, Jefferson, Douglas, Park, Summit and Lake Counties, following the north fork of the South Platte River to Kenosha Summit, through the towns of Buffalo, Pine Grove, Grant and Webster; thence along the northerly edge of South Park to Como; thence up Tarryall Creek to Breckenridge Pass; thence down the Blue River and through the town of Breckenridge to Dickey; thence up Ten-Mile Creek to Fremont or Alicante Pass, and thence to end of track at 5th Street in the City of Leadville, a distance of about 151.20 miles;

Beginning at Como, on the main line from Denver to Leadville, 88.22 miles from Denver, thence in a general southwesterly direction through the Counties of Park, Chaffee and Gunnison, following down Trout Creek to Garos and over the Divide between the South Platte and Arkansas Rivers, to the crossing of the Arkansas River at the mouth of Chalk Creek; thence up Chalk Creek to Alpine Pass; thence down Quartz Creek to Gunnison River; thence down the Gunnison River to the town of Gunnison; thence up Ohio Creek to Castleton; thence to end of track at Baldwin mines, a distance of about 131.05 miles;

Beginning at Sheridan Junction, a point on the main line from Denver to Leadville, 7.52 miles south of Denver; thence westerly along Bear Creek and through Arapahoe and Jefferson Counties, Colorado, to end of track at Morrison, a distance of about 9.96 miles;

Beginning at Dickey, a point on the main line from Denver to Leadville, 116.39 miles from Denver; thence northerly through Summit County, Colorado, down the Blue River to Dillon; thence easterly up Snake River to Keystone, a distance of about 7.04 miles;

Beginning at Garos Station, on the main line from Como to Baldwin, 104.57 miles from Denver, at Garos Station, at the mouth of Trout Creek; thence up the Middle Fork of the South Platte River, through Park County, Colorado, to Alma Station, a distance of about 15.41 miles;

[fol. 369] Beginning at a point on the main line from Como to Baldwin, 132.63 miles from Denver, at Schwanders Station; thence

in a northerly direction through Chaffee County, Colorado, to end of track at Buena Vista, a distance of about 3.98 miles;

Beginning at a point on main line from Como to Baldwin, 216.70 miles from Denver, at Castleton Station, on Ohio Creek; thence in a northerly direction, up Ohio Creek and in Gunnison County, Colorado, to end of track at Alpine Coal Mines, a distance of about 2.49 miles;

Beginning at a point in the branch line from Gares to Alma, 113.69 miles from Denver, and near the town of Fairplay; thence in a westerly direction to Four-Mile Creek, and up Four-Mile Creek in the County of Park, to the end of track at Leavick Station, a distance of about 11.32 miles;

Beginning at a point on main track from Denver to Leadville, at Kokomo Station, 132.84 miles from Denver; thence in a southerly direction in Summit County, Colorado, to end of track at Wilfley's Mill, a distance of about 1.14 miles;

Also to construct or to acquire by purchase, lease or otherwise, and to hold, maintain and operate such extensions of and suprs and branches from said lines of railroad hereinabove described, or any thereof or from any point thereon, as may from time to time be deemed requisite or desirable, including the following branches or extensions, to wit: a branch from a point near Alpine Pass in Gunnison County, Colorado, to the head of Tomichi Creek; thence down Tomichi Creek, through the White Pine Iron District, and thence to Parlins Station, on Quartz Creek, in Gunnison County, Colorado; also a branch or connection from Como, in Park County, by the most feasible route, to Fairplay, Park County; also a line from a point on the main line formerly of said The Denver, Leadville and Gunnison Railway Company near the centre of Section 13, Township 9, South of Range 80 West; thence in a general southeasterly direction, crossing Little Evans Gulch, Big Evans Gulch, Little Stray Horse Gulch and Big Stray Horse Gulch to California Gulch; thence up California Gulch to Oro City, located in the southeast corner of Section 3, Township 9, South of Range 79 West; thence down California Gulch to the Starr Ditch and along the course of the Starr Ditch to a connection with the terminus of the tracks formerly of said The Denver, Leadville and Gunnison Railway Company at Fifth Street in the City of Leadville, with branches to Adelaide and other mines along the line of route, and with a branch line or extension up Evans Gulch to Yankee Hill, and a branch line or extension from Oro City up California Gulch, thence by the most direct and feasible route, over Iowa Pass, to a connection with the Denver, South Park and Hill Top Railway, at Leavick, in Park County; also a line from South Platte Station, in Jefferson County, Colorado, up the South Fork of the South Platte River, or its branches, to the Divide between the South Platte River and the Arkansas; thence by the most feasible route, to Cripple Creek and Victor, in El Paso County, Colorado; also a line from Fort Collins, in Larimer County, Colorado, up the Cashe La Poudre, and by the most feasible route over the Medicine Bow Range, to North Park; also a branch line

from the end of track at Vasquez, in Colfax County, New Mexico, across the Divide between Red River and Vermijo Creek, thence down Vermijo Creek to Maxwell City, thence by the most feasible route to Las Vegas, with branches to the Las Vegas Hot Springs, and with a branch from the most feasible point on said line, up Cimarron Creek and over the Taos Range to Elizabeth Town and Taos; aslo a branch line from some point on the Gunnison River [fol. 370] near Gunnison, Colorado, thence southerly, by the most feasible route, to the town of Creede, in Colorado; also a line from the City of Walsenburg, Colorado, by the most feasible route, to the City of Pueblo, Colorado; also a line from a point at or near Nathrop, through the Poncha Pass and across the San Luis Valley, to a point at or near the town of Del Norte, and thence, by the most feasible route, to the San Juan Mining District in Southwestern Colorado; also a line from the most suitable point on the Gunnison River, by the most feasible route, to Ouray in the Uncompahgre Valley, with a branch from said line to Lake City; and also an extension of the said line of railway, from the most eligible and feasible point on the Ouray extension of said line in the Uncompahgre Valley, and thence by the most eligible and feasible route, by the way of the waters of the San Miguel River and the Dolores River, thence to a point on the western, boundary line or the southern boundary line of Colorado, and within a distance of twenty miles from the southwest corner of said State; and also an extension from the terminus of the branch which runs up Ohio Creek to the Elk Mountain coal fields, and thence by the most feasible route, down the North Fork of the Gunnison River to the Grand River, and thence, by the most eligible and feasible route, to the western boundary line of Colorado; and also extensions and branches, in said State, from some eligible point or points on the lines of railroad or branches of the Company, or from Denver, to Canon City, Silver Cliff and Rosita, in the several counties of Arapahoe, Jefferson, Douglas, Park, El Paso, Pueblo, Fremont and Custer, and connecting said lines of railroad and branches at a point or points by a branch or branches with the main lines or other branches of said railroad; and also a branch from the line of the said road on Ohio Creek, by the most eligible route to Crested Butte, in Gunnison County; and also a line extending from the valley of the South Platte River, by way of Tarryall Creek and the town of Fairplay and Weston's Pass (or Sacramento Creek) to Leadville, in the County of Lake, Colorado; and a line from Keystone up the valley of the Snake River, over Loveland Pass or Argentine Pass, to Graymont and Georgetown, in Clear Creek County, and from Dillon, in Summit County, down the valley of the Blue River to its mouth, and thence across the valley of the Grand River to the valley of Muddy Creek and to the valley of Troublesome Creek, and thence up one or both of said valleys to the Muddy Pass, near Whiteley's Peak, and thence by the most feasible route to the North Park and a connection with the Union Pacific Railway, and from the mouth of the Blue River, in the Grand River Valley, by the most feasible

route to the western and northern boundaries of Colorado and to or near Dotson, in the Grand River Valley; also a line from the town of Gunnison to the western boundary line of the State of Colorado; also from a point in the Gunnison River Valley, by the most feasible route, to the towns of Lake City and Silverton, Colorado, in San Juan County; also to construct or to acquire by purchase, lease or otherwise, and to hold, maintain and operate such other extensions and branches as may be deemed requisite and desirable, and all extensions, spurs or branches necessary or desirable to enable the said company to connect any of its lines with each other, or to reach mines, smelters, coking ovens, quarries, or other works or properties adjacent or tributary to its railways; also to construct or to acquire by purchase, lease or otherwise, and to operate in connection with its railways, a line or lines of telegraph; to lease, or to sell or otherwise dispose of whenever and as thereunto authorized by law, to any other railway or telegraph company or companies, its railway or railways or telegraph lines, or any portion thereof, upon such terms as may be agreed upon between this company and such other company or companies; to establish, main- [fol. 371] tain and conduct an express business upon and along said lines of railway and upon any other railways connected therewith; to acquire, own, hold, manage and operate, by purchase, lease, consolidation, purchase and ownership of the capital stock and obligations of corporations representative thereof or otherwise, other railways situated within or without the State of Colorado whenever and as thereunto duly authorized by law; to purchase, acquire, own and hold, directly or through the stock and securities of other corporations, coal and other mines, stone quarries and timber lands adjacent or tributary to its said railway, and to use, operate and manage the same or any part thereof, if deemed proper for the promotion of its interests; to purchase, acquire, own, hold, use and maintain all such real and personal property as may be necessary for or may contribute to the attainment of the objects of its existence or the transaction of its business, and from time to time, to lease or sell the same or any part thereof, when, in the judgment of its duly authorized officers, such property is no longer needed for the uses of the Company; to purchase, acquire, own, hold and dispose of, in furtherance of the objects and purposes for which this Company is formed, stocks, bonds and securities of other railway corporations in the State of Colorado or elsewhere, or of any corporations, companies or associations in said State or elsewhere, with power to endorse or guarantee the payment of such bonds or securities; to borrow money and to execute and issue its bonds and other securities therefor, and to mortgage its property and franchises as security for such bonds or other obligations; to exercise the right of eminent domain; to cross, intersect or connect its railway with any other railway or railways; to operate, exclusively, or jointly with the owners thereof, its trains over any railway now existing or which may hereafter exist and with which its railways may be at any time connected; to do any act or transact any business which common carriers of persons and property may lawfully do, and, generally, to

have all the powers granted to or acquired by railway or railroad companies by, under or in pursuance of the laws of the State of Colorado.

Third. The term of the corporate existence of this Company shall be fifty (50) years from the date of the filing of this certificate in the office of the Secretary of State of the State of Colorado, and its corporate existence may be renewed in such manner and for such periods as may be authorized by the laws of said State.

Fourth. The capital stock of this Company shall be forty-eight million dollars ($48,000,000) divided into four hundred and eighty thousand (480,000) shares of the par value of one hundred dollars ($100) each. Of said capital stock, eight million five hundred thousand dollars ($8,500,000), divided into eighty-five thousand (85,000) shares of the par value of one hundred dollars ($100) each, shall be first preferred stock; eight million five hundred thousand dollars ($8,500,000), divided into eighty-five thousand (85,000) shares of the par value of one hundred dollars ($100) each, shall be second preferred stock, and thirty-one million dollars ($31,000,000) divided into three hundred and ten thousand (310,000) shares of the par value of one hundred dollars ($100) each, shall be common stock.

[fol. 372] Holders of the first preferred stock shall be entitled to receive dividends thereon when earned and declared for any year, to the amount of four (4) per cent., before any dividend for that year shall be set apart or paid on the second preferred stock or on the common stock, but such preferred dividends shall not be cumulative.

Holders of the second preferred stock shall be entitled to receive dividends thereon when earned and declared for any year to the amount of four (4) per cent., before any dividend shall be set apart or paid on the common stock, but such preferred dividends shall not be cumulative.

After the payment of such dividends on the first preferred stock and the second preferred stock for any year, the holders of the common stock shall be entitled to receive all dividends that may be earned and declared for that year.

The amount of the first preferred stock shall not be increased except with the consent of the holders of a majority of the whole amount of the first preferred stock, given at a meeting of the stockholders called for that purpose.

Fifth. The government of this Company and the management of its affairs shall be vested in a board of nine directors and in the following officers, viz., a president, a vice-president, a secretary, a treasurer and such other officers as the board of directors may from time to time appoint. The persons who shall act as directors of this Company for the first year of its existence, and until their successors shall be elected and shall have qualified, are Edwin T. Rice, Jr., John French, James N. Wallace, Charles H. Ludington, Jr., Albert Fairfax, Frederick H. Herrick, Richard Outwater, Charles A. Kittle

and William H. Bankier. The directors and officers shall receive such compensation for their services as the by-laws of the Company may provide.

Sixth. The principal office of the Company shall be kept in the City of Denver, in the County of Arapahoe aforesaid, but the Company may establish and maintain offices in the City of New York, in the State of New York, and elsewhere, as its by-laws may provide.

Seventh. The principal business of this Company shall be carried on in the counties of Arapahoe, Boulder, Chaffee, Clear Creek, Costilla, Custer, Delta, Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jefferson, Lake, La Plata, Larimer, Las Animas, Logan, Mesa, Mineral, Montrose, Morgan, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Washington and Weld, in the State of Colorado, and in such other counties in said State as the Company may determine. A part of the business of the Company will be carried on beyond the limits of the State of Colorado in the Territory of New Mexico and in the State of Wyoming, and may be carried on elsewhere beyond the limits of the State of Colorado as may become necessary, or as the Company may hereafter determine.

Eighth. The board of directors of this Company shall have power to make, from time to time, such by-laws as it may deem proper for the management of the affairs of the Company, not inconsistent with [fol. 373] the laws of the State of Colorado. Meetings of the board of directors of the Company may be held in the City of New York and State of New York, and may be held elsewhere beyond the limits of the State of Colorado, as may be provided by the by-laws of the Company.

In witness whereof, we have hereunto subscribed our names and affixed our seals this 19th day of December, A. D. 1898.

Elmer E. Whitted. (L. S.) Alexis Dupont Parker. (L. S.)
John S. Macbeth. (L. S.) Thomas F. Dunaway. (L. S.)
B. L. Winchell. (L. S.)

STATE OF COLORADO,
County of Arapahoe,
City of Denver, ss:

I, Rawson F. Watkins, a notary public within and for said County and State, duly commissioned and sworn, do hereby certify that on this 19th day of December, A. D. one thousand eight hundred and ninety-eight, personally appeared before me Elmer E. Whitted, Alexis Dupont Parker, John S. Macbeth, Thomas F. Dunaway and B. L. Winchell, each to me personally known to be the same person described in and whose name is subscribed to the foregoing certificate of incorporation, and each for himself acknowledged that he signed and sealed the same as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of December, A. D. one thousand eight hundred and ninety-eight. My commission expires Aug. 7th, 1901.

Rawson F. Watkins, Notary Public, Arapahoe County, Colorado. (L. S.)

[fol. 374] The Colorado and Southern Railway Company

Certificate

I, Frank Trumbull, President of The Colorado and Southern Railway Company, do hereby certify that at a meeting of the stockholders of The Colorado and Southern Railway Company, held at the principal office of said Company in the City of Denver, Colorado, on the 4th day of January, 1902, at which the holders of the entire capital stock of said Company outstanding were present in person or by proxy, the Certificate of Incorporation of said Railway Company was amended by substituting for the first sentence of Article Fifth of said Certificate of Incorporation, as amended at a meeting of the stockholders of said Company held November 16, 1899, to wit:

"Fifth. The government of this Company and the management of its affairs shall be vested in a board of eleven (11) directors and in the following officers, viz., a president, a vice-president, a secretary, a treasurer and such other officers as the board of directors may from time to time appoint."

the following:

"Fifth. The government of this Company and the management of its affairs shall be vested in a board of thirteen (13) directors and in the following officers, viz., a president, a vice-president, a secretary, a treasurer and such other officers as the board of directors may from time to time appoint."

I further certify that said amendment was adopted by the unanimous vote of the entire capital stock of said Company outstanding, and that each of the stockholders of said Company duly waived notice of the submission to said meeting of said proposed amendment to the Certificate of Incorporation of said Company.

In witness whereof, I have signed this Certificate, which has been attested by the Secretary of said Railway Company, with the seal of said Railway Company, this 4th day of January, 1902.

Frank Trumbull, President The Colorado and Southern Railway Company.

Attest: H. Van Mater, Assistant Secretary The Colorado and Southern Railway Company.

STATE OF COLORADO,
County of Arapahoe, ss:

I Frank Trumbull, of the City of Denver, in the County of and State aforesaid, being duly sworn, do depose and say: that I am the

President of The Colorado and Southern Railway Company and that the facts stated in the foregoing certificate are true.

Frank Trumbull.

Subscribed and sworn to before me this 4th day of January, 1902. My commission expires April 17th, 1905. Albert S. Brooks, Notary Public, Arapahoe County. (Seal.)

[fol. 375] The Colorado and Southern Railway Company

Certificate

I, Frank Trumbull, President of The Colorado and Southern Railway Company, do hereby certify that at a meeting of the stockholders of The Colorado and Southern Railway Company, held at the principal office of said Company in the City of Denver, Colorado, on the 16th day of November, 1899, at which the holders of the entire capital stock of said Company outstanding were present in person or by proxy, the Certificate of Incorporation of said Railway Company was amended by substituting for the first sentence of Article Fifth of said Certificate of Incorporation, to-wit:

"Fifth. The government of this Company and the management of its affairs shall be vested in a board of nine directors, and in the following officers, viz: a president, a vice-president, a secretary, a treasurer, and such other officers as the Board of Directors may from time to time appoint," the following:

"Fifth: The government of this Company and the management of its affairs shall be vested in a board of eleven (11) directors, and in the following officers, viz: a president, a vice-president, a secretary, a treasurer, and such other officers as the Board of Directors may from time to time appoint."

I further certify that said amendment was adopted by the unanimous vote of the entire capital stock of said Company outstanding, and that each of the stockholders of said Company had duly waived notice of the submission to said meeting of said proposed amendment to the Certificate of Incorporation of said Company.

In witness whereof, I have signed this Certificate, which has been attested by the Secretary of said Railway Company, with the Seal of said Railway Company, this sixteenth day of November, 1899.

Frank Trumbull, President The Colorado and Southern Railway Company.

Attest: Charles Wheeler, Secretary The Colorado and Southern Railway Company.

(10¢ documentary stamp.)

State of Colorado,
County of Arapahoe, ss:

I, Frank Trumbull, of the City of Denver in the County and State aforesaid, being duly sworn do depose and say: that I am the

President of The Colorado and Southern Railway Company and that the facts stated in the foregoing Cerificate are true.

Frank Trumbull.

Subscribed and sworn to before me this 16th day of November, 1899. My commission expires August 7th, 1901. Rawen F. Watkins, Notary Public, Aarapahoe County, Colorado.

[fol 376] Thereupon, and after said Exhibits "A" and "B" had been offered and received in evidence as aforesaid, the plaintiff rested its case and offered no other evidence.

Threupon, the defendants, and each of them, likewise rested and offered no evidence.

Whereupon, And after the arguments of counsel for the respective parties, the court made and entered its order herein dismissing the Bill without a written opinion.

To which action and order of the Court the plaintiff then and there duly excepted.

Thereupon, The Plaintiff, by its attorneys, gave notice of an appeal to the Supreme Court of the United States, and made application to the trial court for an order suspending the order of the Interstate Commerce Commission herein complained of pending said appeal, which said application was then and there denied by the court. To which action of the Court the plaintiff then and there duly excepted.

[fol. 377] In United States District Court

[Title omitted]

Certificate to Statement of Evidence—Sept. 17, 1924

The plaintiff appellant, The State of Colorado, tenders and presents the foregoing as its statement of the evidence in his case and prays that the same be approved by the Court and made a part of the record.

Wayne C. Williams, Attorney General of Colorado; Riley R. Cloud, Assistant Attorney General; Barney L. Whatley, Solicitors for Plaintiff.

[fols. 378 & 379] Bond on Appeal for $1,000—Approved and filed Oct. 13, 1924; omitted in printing

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[fols. 380 & 381] Citation—In usual form, showing service on Bruce Scott et al., filed Oct. 14, 1924; omitted in printing

[fol. 382] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Charles W. Bishop, Clerk of the District Court of the United States for the District of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to three hundred seventy-nine (379) to be a true, perfect and complete transcript and copy of the record and proceedings as set forth and described in the præcipe filed herein and of said præcipe, in a certain cause lately in said court pending wherein The State of Colorado, was Plaintiff, and United States of America, The Interstate Commerce Commission, and The Colorado and Southern Railway Company, a corporation, were defendants, as fully and completely as the same still remain on file and of record in my office at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at the City and County of Denver in said District, this twenty-fifth day of October, A. D. 1924.

Charles W. Bishop, Clerk. (Seal of United States District Court.)

Endorsed on cover: File No. 30,680. Colorado D. C. U. S. Term No. 195. The State of Colorado, appellant, vs. The United States of America, Interstate Commerce Commission, and The Colorado and Southern Railway Company. Filed November 4th, 1924. File No. 30,680.

[redacted]

[redacted]

THE STATE OF COLORADO,
Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and THE COLORADO AND SOUTHERN RAILWAY COMPANY,
Appellees.

BRIEF FOR APPELLANT.

WILLIAM L. BOOTHMAN,
Attorney General,

S. E. NAVEAR,
Assistant Attorney General,

BARRETT L. WHEATLEY,
Solicitors for Appellant.

[redacted]

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In the

Supreme Court of the United States

October Term, 1925

THE STATE OF COLORADO,
Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and THE COLORADO AND SOUTHERN RAILWAY COMPANY,
Appellees.

BRIEF FOR APPELLANT.

GROUNDS OF JURISDICTION.

This is an appeal from a final judgment and decree of the United States District Court for the District of Colorado dismissing appellant's petition and bill of complaint, and denying temporary and permanent injunction, in a suit in equity brought by the State of Colorado to enjoin, set aside, annul and suspend, in part, an order of the Interstate Commerce Commission.

Jurisdiction of the lower court was invoked under Sections 207, 208 and 209 of the Judicial Code as amended

by Act, Oct. 22, 1913, c. 32 (38 Stat. L. 219), and the appeal to this court is taken pursuant to Section 210 thereof (38 Stat. 220).

No opinion was delivered by the court below.

Judgment was entered August 18, 1924 (R. 41—July 23 is a misprint. See R. 45.)

CLAIMS ADVANCED IN LOWER COURT.

The specific claims advanced in the lower court were:

That on December 19, 1898, the State of Colorado granted to The Colorado & Southern Railway Company a charter for the object and purpose, among others, of acquiring and taking over, maintaining and operating, for the period of 50 years, various lines of railroad, and gave and granted to that company many valuable powers, franchises and privileges, all of which the company now has, holds and enjoys, and none of which has it surrendered or relinquished (R. 1): That the company did, under and pursuant to that grant and charter, take over and has since maintained and operated, those lines of railroad as common carrier lines (R. 2); that among those lines is a certain line about 29½ miles in length which lies wholly and entirely in Chaffee County, Colorado, extending from Buena Vista to Romley, St. Elmo and Hancock, which is not and for 14 years has not been a part of any other line, and that the continued operation thereof in intrastate commerce is a matter of local concern only and will not burden or cripple any other line of railroad so as to affect its utility or service as an artery of interstate and foreign commerce, or at all (R. 2).

That about September 1, 1921, the Railway Company applied to the Interstate Commerce Commission for the issuance of a certificate of public convenience and necessity under paragraphs 18-22, inclusive, of Section 1 of the Interstate Commerce Act as amended by Transportation

Act, 1920, authorizing the total abandonment of the so-called Buena Vista-Romley line and the removal of the track; that the Interstate Commerce Commission assumed jurisdiction, and docketed the case as its "Finance Docket 1572"; that plaintiff and numerous others filed protests against granting the application (R. 2); that the Commission proceeded to hold and did hold several hearings concerning the matter, over the objection of plaintiff (R. 3); that the Commission finally entered an order dated February 11, 1924, authorizing the total abandonment of said line as to both intrastate and interstate business, and that the Railway Company claims and asserts that the report, decision, order and certificate constitute its authority to tear up and remove the tracks and to discontinue all intrastate as well as all interstate and foreign commerce service over said line (R. 30).

That insofar as said order of the Commission authorized or permitted the abandonment of said line in respect to intrastate commerce, it was in excess of the power and authority of the Commission under the said Acts, and that the Commission erred as a matter of law (R. 3); that the Commission has no power or authority over intrastate commerce as such; that no evidence was introduced before the Commission showing or tending to show, and that there was no finding by the Commission, that the continued operation of said line in intrastate commerce would burden or cripple the Company's other lines so as to affect their utility or service as arteries of interstate and foreign commerce (R. 3); that no evidence was introduced before the Commission showing or tending to show the present fair value of the Company's properties as a whole, nor of any part or portion thereof, and that there was no finding by the Commission as to such value (R. 3-4); that there was no evidence before the Commission showing the operating revenues and expenses of the Railway Company's intrastate business considered separately,

nor of its interstate business considered separately, and no finding by the Commission as to either (R. 4); that there was no evidence and no finding that the Company was not earning a fair and reasonable return on the present fair value of its properties used and useful in the public service, nor on that portion of its said properties used and useful in intrastate business (R. 4); that there was no evidence to show, and no finding by the Commission, that the alleged losses sustained or to be sustained in the continued operation of said line in intrastate commerce would or could reduce the Railway Company's net operating income to a point where the company would not be earning and getting a fair and reasonable return on the value of its properties (R. 4); that said order, to the extent that it affects intrastate commerce, is not based on competent evidence, or any evidence, but is the result of mere conjecture (R. 4).

That the said order and certificate, insofar as they authorize the abandonment of said line of railroad as to intrastate commerce, is in excess of the power and authority of the Commission, in violation of the Interstate Commerce Act and Transportation Act, 1920, and in contravention of the Constitution of the United States, and will, if enforced, violate plaintiff's rights under said Acts and under the Constitution, to regulate and control its intrastate commerce (R. 4).

That the Commission further exceeded the power and authority vested in it in that it did, in effect, and over the objection of the State, undertake to pass on the contract rights of the state with the Railway Company and by said order and certificate it undertook to release and relieve the Railway Company of and from its contract and charter obligation to operate said line of railroad in intrastate commerce for and during the life of its charter or so long as it has, holds and enjoys the powers, rights and privileges thereof (R. 5).

That the order and certificate of the Commission, insofar as it authorizes the abandonment of said line as to intrastate commerce, is arbitrary, illegal and void, and deprives the plaintiff and its citizens of property and rights without due process of law; that it is unreasonable and confiscatory; that it is contrary to the evidence submitted to the Commission; that it is not supported or warranted by the evidence, and is not based upon nor supported by sufficient findings of fact (R. 5).

That the Railway Company is threatening to abandon the line as to all commerce and to tear up and remove the tracks and structures and to refuse to continue the operation thereof in intrastate commerce (R. 5).

That plaintiff and its citizens and industries will suffer great and irreparable injury and damage; that all homes and industries located along the line will, by abandonment, be rendered useless and valueless for the reason that there are no other means of ingress and egress to and from said communities and localities except a very narrow, crooked and poorly kept mountain dirt road which, on account of snow and ice conditions, is not open and can not be used in the winter months (R. 5).

That plaintiff and its citizens and industries have no adequate remedy at law and that it is necessary for the protection of plaintiff and its citizens and industries that equity should intervene and that preliminary and permanent injunction be granted against the enforcement of the orders complained of (R. 5).

That the defendant Railway Company has never at any time, or in any way, either asked or obtained the consent of the State or its Public Utilities Commission for the abandonment of said line as to intrastate business, and that the State has not consented to such abandonment (R. 6).

The prayer was that the orders of the Commission be found and decreed to be unwarranted, illegal and void, insofar as they authorize or permit the abandonment of said line as to intrastate business, and that to such extent they be superseded and set aside. Temporary and permanent injunctions were asked and general relief prayed for. (R. 6.)

The petition for injunction was denied (R. 41—July 23 is misprint. See R. 45 for date of trial). Appeal was prayed September 18, 1924, and allowed October 10, 1924 (R. 42). Assignment of Errors was filed September 18, 1924 (R. 42).

STATEMENT OF THE CASE.

The Colorado & Southern Railway Company was chartered by the State of Colorado, December 19, 1898, for a period of 50 years, for the purpose of acquiring and taking over, maintaining and operating, various lines of railroad which had theretofore been constructed and operated by other and different corporations (R. 249-263, incl.). By that charter the company was vested with the power of eminent domain and given other powers, franchises, rights and privileges, all of which it has since had, held, exercised and enjoyed, and still has and holds (R. 25).

Among the lines of railroad so acquired, taken over, maintained and operated by the Railway Company, under said charter, was a main line extending from Como, Park County, Colorado, to the Baldwin Coal Mines in Gunnison County, Colorado, a distance of 131.05 miles (R. 255). This was a narrow gauge line. In 1910 operations over this line were discontinued from Garos, Park County, Colorado, to McCune, Chaffee County, Colorado, and from Hancock, Chaffee County, west. (R. 84—See also map insert between pp. 60 and 61, and Exhibits 14 and 15 inserted between pages 160 and 161). This left the portion

of the line from Buena Vista to Hancock, all of which is in Chaffee County, Colorado—about 29½ miles in length—without any physical connection with the operated portions of this line or any other line of the Railway Company (R. 95). This segregated portion of the line has been continuously operated by the company under its charter since its incorporation (R. 60-61).

This line is a part of what was originally The Denver, Leadville and Gunnison Railway Company's system (R. 175, 253, 255). At the time of the purchase of that system the C. & S. acquired valuable terminal facilities in the City of Denver which it still owns (R. 175-176).

September 1, 1921, the Railway Company filed with the Interstate Commerce Commission its petition or application (R. 46-47) for the issuance to it of a certificate of public convenience and necessity under paragraphs 18-22, inclusive, of Section 1 of the Interstate Commerce Act, as amended by Transportation Act, 1920, authorizing the total abandonment of the so-called Buena Vista-Romley line, and the removal of the track. Various towns and mining companies located along and dependent upon the line of road filed petitions and were allowed to intervene (R. 48-49 incl.). After hearing, the Commission, on July 28, 1922 (R. 30-35, incl.) entered its order denying the application. In that decision the Commission said:

> "The abandonment of this branch would deprive a large section of the benefits of rail transportation, would end the development of the resources tributary to the line and would probably result in the abandonment of this district and the loss of the large investment heretofore made. While the operation of the line for the past four or five years has resulted in substantial losses the record affords some assurance that the conditions which

produced that result are changing and that future operations may show a more favorable return.

Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application. It is not in the public interest that even a strong line like the applicant should permanently operate parts of its system that do not yield revenues sufficient to pay operating expenses and interest on the net scrap value of the property" (R. 34).

May 19, 1923, the Railway Company filed with the Commission (R. 163) its further or renewal application for the abandonment of the line, basing it on the language of the Commission above quoted. At this second hearing the protestants contended that a reasonable time had not elapsed between the rendition of the first decision and the filing of the second application, because of the local conditions, such as the severe winter (R. 192, 204); statements by company officials that abandonment was their continued intention (R. 193); impossible to get cars (R. 194); cessation of railroad service for a month (R. 194); inability to get coal (R. 195); strike of railway shop-men (R. 195, 200), and last but not least, the renewal of the application before the snow was gone in the Spring of the year (R. 193, 200). (See also R. 35-36.)

The Commission entered its order dated September 24, 1923 (R. 35-36), authorizing the abandonment. After that order and report the State of Colorado and all other protestants filed petitions for rehearing (R. 234-243, incl.), and the case was reopened for further argument (R. 243). Further argument was had December 1, 1923, and final

decision and order was handed down February 11, 1924, by which six members (a majority) of the Commission authorized the abandonment and five members dissented (R. 7-11, incl.; 244-249, incl.). The effective date of the order was fixed for August 11, 1924 (R. 12).

July 15, 1924, the State of Colorado filed its petition and bill of complaint in the lower court (R. 1). Defendants, the Interstate Commerce Commission and Colorado & Southern Railway Company answered August 7, 1924 (R. 12, 23), and the United States answered August 11, 1924 (R. 39).

The case was submitted to the lower court August 18, 1924 (R. 45), upon plaintiff's Exhibits A and B (R. 249). No evidence was offered by the defendants.

Exhibit A is a duly authenticated copy of the record and exhibits in all the hearings and proceedings before the Interstate Commerce Commission (R. 46 to 249, incl.).

Exhibit B is a duly authenticated copy of the Articles of Incorporation of the Colorado & Southern Railway Company, and amendments thereto (R. 249-263, incl.).

The evidence shows that the territory traversed by this line of railroad is rugged and mountainous. The road has a maximum grade of 4% (R. 88) and a maximum curvature of 29 degrees (R. 89). 37% of the line is curved and 63% is not (R. 89). Snow conditions in the winter months make the operation of the line expensive (R. 96).

The principal industry is metalliferous mining (R. 17). For several years prior to the commencement of these proceedings before the Interstate Commerce Commission the metal mining industry in general had been struggling with economic conditions, generally charged to have resulted from the war, which made it next to impossible to carry on profitable operations, and the mines

on this line were no exception (R. 100-106; 111-113; 129, 192, 232). These conditions were gradually improving at the time of these hearings (R. 101, 120, 129, 232).

These depressed conditions resulted in a diminution of business over the line of railroad here in question (R. 19), but development work was carried on by the various mines at heavy expense (R. 17). Miners moved away with their families to seek employment and the population of the various districts was much less than when the mines were actively producing (R. 101, 132).

St. Elmo, Romley and Hancock are the principal shipping points for the various mines (R. 105). In addition to the properties in those immediate districts there are other mines in Grizzly Gulch, Tincup and Taylor Park districts, which are served solely by this line (R. 105). There are many mines in these various districts (R. 104). One of them has an investment in the neighborhood of $2,000,000.00 (R. 101, 17) and the others in various amounts (R. 17), all of which will be finally and totally lost without railroad service (R. 19, 102, 105, 126, 132, 199). This is the only line of railroad serving those districts (R. 105), and the snow and weather conditions in the winter months are such that there could be no traffic without a railroad (R. 125, 18).

From January 1, 1916, to November 30, 1921, the Comparative Statement of Operation on this particular line considered by itself showed the following results (R. 67, 148, 18):

Operating Revenues	$ 80,603.50
Operating Expenses	185,912.74
Taxes	106,716.87
Interest	145,550.00
Total Deficit	$357,576.11

Taking all of the year 1921 (11 months of which is included in the figures last above set forth), 1922, and the first five months of the year 1923, the following result is shown (R. insert table between pages 220 and 221):

	1921	1922	5 mos. 1923
Operating Revenues	$10,858.73	$11,238.12	$ 3,444.91
Operating Expenses	38,723.37	34,909.47	16,410.15
Taxes	35,934.38	38,188.24	15,915.69
Interest	24,600.00	24,600.00	10,250.00

In its first report and decision (R. 18) the Commission specifically found (R 18): "That the proposed abandonment would not effect any reduction in applicant's present interest charges", for the reason that there was no evidence of indebtedness resting wholly on this line.

The Commission further found (R. 19) that the evidence "leaves in doubt the question as to how much, if at all, applicant's tax payments would be reduced by the abandonment of this line (See R. 106).

The Company allocates or pro-rates to this line a portion of its general expenses (R. 85). All expenses common to any other district are divided on a train mileage basis (R. 85).

The Company's net railway operating income from its entire system, for the years 1916 to 1922 is shown as follows: (R. 156, 157, 229):

1916	1917	1918	1919	1920
$2,913,636	$3,532,390	$2,803,700	$1,638,726	$2,835,102

11 mos. 1921	1922 (R. 229)
$1,869,401	$1,468,057.78

Total $17,061,012.78

An audit was made for protestants for the year August 1, 1920, to August 1, 1921 (R. 160-161, 108) showing an operating income of $1,985,367.63.

There is nothing in the record to show what part or portion of this railway operating income was derived from intrastate business, nor what portion from interstate business, and the Commission made no finding on that point.

The total capitalization of the company is $48,000,000.00, divided into $31,000,000.00 common and $17,000,000.00 preferred stock. (R. 65 and 227).

The total of its outstanding funded debt is $50,713,900.00 (R. 227).

The various lines of road owned by the Company were purchased in the first instance with a stock and bond issue (R. 84). Some of the equipment was acquired in the same way (R. 84).

The investment in road and equipment as carried on the books December 31, 1922, is given at $81,591,197.37 (R. 226); this figure does not carry any depreciation (R. 84).

There is no evidence in the record to show what portion of the property is used in intrastate business, nor what portion in interstate business (R. 179). No separation as between these two classes of business was attempted either by the company in its proof or the Commission in its findings.

The company has been able at all time to pay the interest on its funded debts (R. 176-177); for the years 1917 to 1922, inclusive, it distributed $680,000.00 annually as dividends on its preferred stocks (R. 177; also insert table between pages 66 and 67, and R. 230); for some of those years it has paid 3% on its common stock (R. 177, 231, 87).

The railway company has never at any time, or in any way, sought, asked or obtained the consent of the State of Colorado, nor of its Public Utilities Commission, for

the abandonment of this line as to intrastate business, and the state has not consented to such abandonment (R. 29, par. 14).

ASSIGNED ERRORS.

1. The Court erred in holding that the order of the Interstate Commerce Commission dated February 11, 1924, purporting to authorize the defendant, The Colorado and Southern Railway Company, to abandon its line of railroad in Chaffee County, Colorado, as to intrastate business, was and is a valid and lawful order and within the power of said Commission to make, and that said order was and is supported and justified by the evidence.

2. The Court erred in not suspending and setting aside the said order of said Commission insofar as the same authorized the abandonment of said line of railroad as to purely intrastate business.

3. The Court erred in holding that it is within the power and authority of the Interstate Commerce Commission to authorize the Colorado & Southern Railway Company to abandon, as to intrastate business, without the consent of the State, a portion of one of its lines of railroad located wholly within the State of Colorado, while the said Railway Company continues to hold, exercise and enjoy the charter rights, powers and privileges granted to it by the State of Colorado.

4. The Court erred in holding that there was no duty on the said Commission in this case to separate and separately consider the intrastate business, property, revenues and expenses of said Railway Company, from its interstate business, revenues and expenses.

5. The Court erred in holding that the Interstate Commerce Commission made in this case essential findings to support its order.

6. The Court erred in holding that the essential findings of the Commission in this case are supported by competent evidence.

7. The Court erred in holding that there was a finding by the Commission based upon competent evidence that the continued operation of the said line of railroad in purely intrastate business would put a substantial burden on interstate and foreign commerce, or would so cripple the other lines of said company as to affect their utility and service as arteries of interstate and foreign commerce.

8. The Court erred in holding that the order of the Commission in this case is not arbitrary, illegal, void and beyond the power and authority of said Commission to make, insofar as said order authorizes the abandonment of said line of railroad as to purely intrastate business.

9. The Court erred in refusing the application of plaintiff for an order suspending the order of the Commission pending appeal.

10. The Court erred in dismissing the Bill of Complaint.

BRIEF AND ARGUMENT.

SUMMARY.

1. It is the duty of a railroad company doing business as a common carrier to provide reasonably adequate facilities for serving the public, and the State has the power to compel it to do so as long as the powers and privileges granted to the carrier by the state are retained and enjoyed.

Chesapeake & Ohio Ry. Co. v. Public Service Com. etc., 242 U. S. 603 (607);

Atlantic Coast Line R. R. Co. v. North Carolina Corp. Com. 206 U. S. 1 (19);

Missouri Pacific R. R. Co. v. Kansas, ex rel. etc., 216 U. S. 262;

Oregon R. R. & Nav. Co. v. Fairchild, 224 U. S. 510 (529);

Pittsburg & Shawmut Coal Co. v. Del. & N. R. A. 289 Fed. 133;

Colorado & Southern Ry. Co. v. Railroad Com., 54 Colo. 64 (92-93).

2. The State may compel the performance of that duty on the part of the carrier even though it results in a financial loss to the carrier, unless all of its charter rights and privileges are surrendered.

Cases Cited, supra, and

Brooks-Scanlon & Co. v. Railroad Com., 251 U. S. 396;

Railroad Com. of Texas v. Eastern Texas R. R. A. 264 U. S. 79, 68 L. Ed. 569;

Fort Smith Lt. & Traction Co. v. Bourland, et al. —— U. S. ——, 45 Sup. Ct. Rep. 249, No. 220, Oct. 1924 term.

3. Where the state has ordered the carrier to provide a certain service, the question of financial loss is an important circumstance in determining the reasonableness of the order; but in advance of such an order the question of financial loss is not involved.

Cases cited, supra.

4. Neither the Interstate Commerce Act nor Transportation Act 1920, takes from the state the right to regulate and control its intrastate commerce; and to the extent that they or either of them may attempt to do so they are unconstitutional.

Texas v. Eastern Texas R. R. Co., 258 U. S. 204;

R. R. Com. of Texas v. Eastern Texas R. R. Co., 264 U. S. 79, 68 L. Ed. 569;

Ft. Smith Lt. & Trac. Co. v. Bourland, et al. —— U. S. —— No. 220, October term, 1924.

5. The Interstate Commerce Commission is without power or authority to authorize the abandonment, as respects intrastate business, of a line of railroad wholly within a state, which is owned and operated by a corporation of that state; and at the same time permit the company to retain and enjoy its charter rights and privileges.

Cases cited, supra.

6. This is not a case of discrimination against interstate and foreign commerce, nor of the construction of any new plant or facility, nor of rates, and decisions of this court involving these questions do not change the rule announced in the cases above cited.

7. Where it is shown that a railroad company chartered by a state has for seven years enjoyed an average annual net operating income of practically $2,450,000.00, and there is no showing or finding as to the value

of its properties used and useful in the public service, and no showing that it is not earning and getting a fair return on the present fair value of those properties, an order of the Interstate Commerce Commission authorizing the abandonment, as respects intrastate business, of a portion of one of the company's lines located wholly within that state, is not supported by sufficient evidence or findings, and should be set aside as arbitrary action.

8. An order of the Interstate Commerce Commission for the total abandonment of a line of railroad wholly within a state, owned and operated by a corporation of that state, made without any evidence concerning, and without giving consideration to, property values, revenues and expenses of the intrastate business of the carrier considered separately from the interstate business, and without a finding concerning such matters, is not supported by proper evidence or findings and should be set aside.

Baltimore & O. R. Co. v. United States, 264 U. S. 258, 68 L. Ed. 667;

Simpson v. Shepard, 230 U. S. 352;

St. Louis & S. F. R. R. Co. v. Gill, 156 U. S. 649;

Cumberland Tel. & Tel. Co. v. Louisiana P. S. Com., 283 Fed. 215.

9. An order of the Interstate Commerce Commission authorizing the abandonment, as respects intrastate business, of a line of railroad located wholly within a state and owned and operated by a corporation of that state, which order is based solely on the past operating results of the particular line when the company was engaged in both interstate and intrastate business and under schedules of operation voluntarily inaugurated and maintained by it, and where there is no showing or finding as to how many trains will be required in the future for the

service and accommodation of purely intrastate business nor of the financial results of operating such train or trains, is not supported by sufficient evidence or findings, and should be set aside.

Baltimore & O. R. Co. v. U. S., supra.

10. An order of the Interstate Commerce Commission based, in part, upon the fact that the railroad corporation offered to lease its line for a nominal rental to those who protested its abandonment, should be set aside as arbitrary and unwarranted.

11. Five members of the Interstate Commerce Commission dissented from the order as respects abandonment in intrastate commerce.

I.

DUTY OF RAILROAD COMPANY TO PROVIDE ADEQUATE FACILITIES.

The contention of appellant is that it is the duty of the railway company to provide reasonably adequate facilities for serving the public; that this duty arises out of the acceptance and enjoyment of the powers and privileges granted to it by the state and endures so long as they are retained; that the state has the power under its reserved constitutional rights, and under the decisions of this court, to compel the railway company to provide such facilities for serving its purely intrastate commerce and that the company cannot avoid that duty so long as it retains its charter, merely because it may be attended by some pecuniary loss.

In *Chesapeake & Ohio Railway Company v. Public Service Commission of West Virginia*, 242 U. S., 603 (607), the rule is stated thus:

"One of the duties of a railroad company doing business as a common carrier is that of providing reasonably adequate facilities for serving the public. This duty arises out of the acceptance and enjoyment of the powers and privileges granted by the State and endures so long as they are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided merely because it will be attended by some pecuniary loss."

Opinion by Mr. Justice Van Devanter, decided February 5, 1917.

In *Atlantic Coast Line Railroad Company v. North Carolina Corporation Commission,* 206 U. S. 1 (19), it is said:

"The elementary proposition that railroads from the public nature of the business by them carried on and the interest which the public have in their operation are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine."

Again, *at page 26 of the opinion, Mr. Justice White* used this language:

"The case in hand * * * is concerned solely with an order directing a carrier to furnish a facility which it is a part of its general duty to furnish for the public convenience. The distinction between an order relating to such a subject and an order fixing rates coming within either of the hypotheses which we have stated is apparent. This

is so because as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so as an incident some pecuniary loss from rendering such service may result. It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was unreasonable under the doctrine of *Smyth v. Ames* or under the concessions made in the two propositions we have stated. Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary facilities is coterminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the services required, and the public need for its performance."

Opinion by Mr. Justice White, decided April 29, 1907.

Again in *Missouri Pacific R. R. Co. v. Kansas, ex rel. Taylor*, 216 U. S. 262, 54 L. Ed. 472, we find:

"When the controversy here presented is properly analyzed, the first and pivotal question arising is whether the order complained of did anything more than command the railroad company to perform a service which it was incumbent upon it to perform as the necessary result of the possession and enjoyment of its charter powers, and which it could not refuse to perform as long as the charter powers remained and the obligation

which arose from their enjoyment continued to exist."

Opinion by Mr. Justice White, decided February 21, 1910.

Further along in the same opinion, Mr. Justice White used this language:

"The fact that the performance of the duty commanded by the order which is here in question may, as we have conceded for the purpose of the argument, entail a pecuniary loss, is, of course, as declared in the Atlantic Coast Line Case, as a general rule, a circumstance to be considered in determining its reasonableness, as are the other criteria indicated in the opinion in that case. But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, other considerations are, in the nature of things, paramount, since it cannot be said that an order compelling the performance of such a duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that a corporate charter was purely unilateral; that is, was binding in favor of the corporation as to all rights conferred upon it, and was devoid of obligations as to duties imposed, even although such duties were the absolute correlative of the rights conferred."

In *Oregon R. R. & Nav. Co. v. Fairchild*, 224 U. S. 510, 529:

"If the order involves the use of property needed in the discharge of those duties which the carrier is bound to perform, then, upon proof of the necessity, the order will be granted, even though the furnishing of such necessary facilities may

occasion an incidental pecuniary loss. But even then the matter of expense is 'an important criteria to be taken into view in determining the reasonableness of the order'. Atlantic Coast Line R. R. v. North Carolina Commission, 206 U. S. 1, 27; Missouri Pacific Ry. v. Kansas, 216 U. S. 262. Where, however, the proceeding is brought to compel a carrier to furnish a facility not included within its absolute duties, the question of expense is of more controlling importance. In determining the reasonableness of such an order the court must consider all the facts—the places and persons interested, the volume of business to be affected, the saving in time and expense to the shipper, as against the cost and loss to the carrier."

Opinion by Mr. Justice Lamar, decided April 29, 1912.

In the case of Pittsburgh & Shawmut Coal Co. v. Delaware and N. R. Co., 289 Fed. 133, application was made to the court by the receivers of the road for an order authorizing the abandonment of the Andes branch of said railroad, extending from Andes Junction, near Union Grove, to the village of Andes, in the County of Delaware, a distance of eight miles, and for the disposal of the property. The Court said:

"It will, however, be assumed for the purpose of the argument that the allegations of the receivers are correct, that the branch is operated at a substantial annual loss, that the maintenance charge is excessive, and that the traffic is largely one way.

At the threshhold of this application, the contention is made that this court has no power to authorize the abandonment of a part of a railroad operated under a franchise from the state of New York. If this be so, it disposes of this application. Little question is raised but that the owners of a

railroad may abandon the entire road, if it cannot be operated without continuous loss, and there is no reasonable prospect of profitable operation in the future. *Brooks-Scanlon Co. v. Railroad Com.*, 251 U. S. 396, 40 Sup. Ct. 183, 64 L. Ed. 323; *Bullock v. State of Florida*, 254 U. S. 513, 41 Sup. Ct. 193, 65 L. Ed. 380.

This right of abandonment, being constitutional in its nature, cannot be impaired by subsequent legislative enactment, either Federal or State. The abandonment of a part of a railroad, without the consent of the State, because the operation of such part entails a loss, while the profitable part of the road is continued in operation, is quite another question.

The courts of the State of New York seem to have held that a railroad company may not abandon a part of its railroad, and operate the remainder, without the consent of the State. (Citing *People v. Albany & Vermont Railroad Co.*, 24 N. Y. 261, 82 Am. Dec. 295, and *Paige v. Schnectady Railroad Co.*, 178 N. Y. 102, 70 N. E. 213, and *Public Service Commission v. New York R. Co.*, 77 Misc. Rep. 487, 136 N. Y. Supp., 720.)

Outside of the State of New York, the great preponderance of authorities supports the same rule. (Citing many authorities, including *Colorado & Southern R. Co. v. State Railroad Commission*, 54 Colo. 64, 129 Pac. 506. Also quoting from *Missouri Pacific R. Co. v. Kansas*, 216 U. S. 262, *supra.*)

In *Brooks-Scanlon & Co. v. Railroad Commission*, 251 U. S. 396, 40 Sup. Ct. 183, 64 L. Ed. 323, the court while deciding that the entire railroad enterprise should be abandoned because incapable of operation without loss, also said:

'It is true that if a railroad continues to exercise the powers conferred upon it by a charter from a state, the state may require it to fulfill an obligation imposed by the charter, even though a fulfillment in that particular may cause a loss.'

The ground upon which these decisions are based is that a railroad franchise or corporate charter granted by a State may not be altered or modified, or the railroad released from any of its corporate obligations, without the consent of the State. For this court to permit its receiver to abandon this Andes branch, while the remainder of the railroad continues to be operated by the receiver, would be for the court, without the consent of the State, to alter or modify the corporate charter or franchise granted by the State, and to release the railroad from some of its obligations, which turned out to be undesirable and burdensome, while retaining the desirable ones. This should not be done without ample authority."

Defendant Railway Company's own charter has been so construed by the Supreme Court of the State of Colorado.

"The consideration for the franchise, rights and privileges granted a railroad company by a State is the resulting benefits to the public, and the acceptance by the company, generally speaking, imposes upon it the obligation to operate, when constructed, the railroad it was incorporated to construct, and of doing so in the manner and for the purposes contemplated by its charter. (Citing authorities.)

One of the obligations thus imposed, as we have said, is to so operate its trains as will reasonably serve the needs of the public."

Colorado and Southern Railway Co. v. Railroad Commission, 54 Colo. 64 (92-93).

At pages 90 and 91 of the opinion in the case last cited, the Colorado Supreme Court said:

> "It must be remembered that railways are corporations organized for public purposes, have been granted valuable franchises and privileges, and that primarily they owe duties to the public of a higher nature even than that of earning large dividends for their shareholders. *United States v. Trans-Missouri Freight Association*, 166 U. S. 290 (332). The franchise which plaintiff in error obtained by incorporating under the laws of this state was not granted for its profit alone, or that of its stockholders, but, in a larger measure, for the benefit of the public, and while it is a private corporation, the public is interested in the business in which it is engaged in the capacity of a common carrier. In this capacity it is a public servant, and amenable as such."

At page 93 of the opinion the Colorado Supreme Court said:

> "The law imposes upon it the duty of furnishing adequate facilities to the public on its entire system, not a part; and it cannot be excused from performing its full duty merely because, by ceasing to operate a part of its system, the net returns would be increased."

These cases are a few of many, both Federal and State, selected merely to illustrate the point. They not only state the general principles of law applicable to the case at bar, but they construe the charter of the defendant railway company and define the obligation thereof.

The right and power of the State being thus settled and established, it is not within the power or authority of the Interstate Commerce Commission to invade the State's field and deprive the State of that which rightfully belongs to the State.

II.

THAT THE PERFORMANCE OF THE DUTY MAY RESULT IN FINANCIAL LOSS IS NO EXCUSE FOR NON-PERFORMANCE.

Under the foregoing authorities, the State has the right to compel the carrier to perform its duty to the public, even though performance may be attended by a pecuniary loss or disadvantage, unless and until the carrier chooses to surrender the charter.

In the case at bar the railroad company has not surrendered its charter (R. 25).

In addition to the above cases, attention is called to *Railroad Commission of Texas v. Eastern Texas R. R. Co.*, 264 U. S. 79, 68 L. Ed. 569; *Brooks-Scanlon & Co. v. Railroad Commission*, 251 U. S. 396; *Ft. Smith Lt. & Traction Co. v. Bourland, et al.*, No. 220, October Term, 1924.

The reason for the rule is that abandonment of railroad service once established and long enjoyed results in loss to the public.

In its first decision and report in this case the Commission found that:

> "The abandonment of this branch would deprive a large section of the benefits of rail transportation, would end the development of the resources tributary to the line, and would probably result in the abandonment of this mining district and the loss of the large investments heretofore made." (R. 19.)

We earnestly submit that these large investments should not be wiped out, without the consent of the State, while permitting the company to hold and enjoy all the rights, powers and privileges of its charter and shun the duties and obligations thereof.

III.

QUESTION OF FINANCIAL LOSS NOT INVOLVED IN THIS CASE.

In most of the cases above cited, the question arose where the state had entered some kind of an order requiring the carrier to provide or furnish some certain facilities or service which the railroad contended it coulda't do except at a financial loss. It is in such cases that the Court has held that the question of pecuniary loss is an important circumstance to be considered in determining the reasonableness of the order or requirement, but that question is not involved in this case. Here the State has made no determination or order as to what will be reasonably adequate service or facilities on this line; it has not ordered or directed the company to provide or furnish trains daily, weekly, or at all, to serve the intrastate business. Until such an order is made it cannot be known that there will be a loss, or that it will be unreasonable.

The mere fact that the company has in the past, while it was engaged in both interstate and foreign commerce, as well as in intrastate commerce, sustained certain losses under schemes and schedules of operation voluntarily inaugurated and maintained by it, does not prove that some order or requirement which the State may possibly make in the future for the service of the public on this line, in purely intrastate commerce, will be unreasonable because attended by pecuniary loss. Furthermore, when that question does arise, it will be a question for the courts and not for the Interstate Commerce Commission.

IV.

POWER OF THE STATE TO REGULATE AND CONTROL INTRASTATE BUSINESS NOT TAKEN AWAY BY INTERSTATE COMMERCE ACT NOR TRANSPORTATION ACT, 1920.

Neither the Interstate Commerce Act nor Transportation Act, 1920, takes from the State the right to require a railroad corporation which still holds and enjoys the charter powers and privileges granted it by the State to provide reasonably adequate facilities for serving the public in purely intrastate business; and insofar as they may attempt to do so they are and each of them is unconstitutional.

Discussing the Transportation Act and the Interstate Commerce Act, this Court has said:

> "As a whole, these acts show that what is intended is to regulate interstate and foreign commerce, and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce. *Minnesota Rate Case (Simpson v. Shepard)*, 230 U. S. 352, 418, 57 L. Ed. 1511, 1549; 48 L. R. A. (N. S.) 1151; 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18; *Railroad Commission v. Chicago, B. & Q. R. Co.*, 257 U. S. 563, Ante. 371, 42 Sup. Ct. Rep. 232. And had there been a purpose here to depart from the accustomed path, and to deal with intrastate com-

merce as such, independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared. This was not done."

Texas v. Eastern Texas R. R. Co., 258 U. S. 204.

In the same opinion, the following language is used concerning the constitutionality:

"If paragraphs 18, 19 and 20 be construed as authorizing the commission to deal with the abandonment of such a road as to intrastate as well as interstate and foreign commerce, a serious question of their constitutional validity will be unavoidable."

In the case last cited, the Interstate Commerce Commission had entered an order authorizing the abandonment of the Eastern Texas Company's entire line of road within the State of Texas as to both interstate and intrastate commerce. The Court held that the Transportation Act of 1920 had no application to, and that the Commission had no jurisdiction over, the intrastate business of a carrier chartered as that company was chartered, and whose line was located as was its line.

Later the Eastern Texas Railway Company offered to surrender its charter and quit business altogether. The State of Texas contended that the company must nevertheless operate the line, regardless of losses, for and during the time for which the charter was granted and that the company could not surrender the charter without the consent of the State. The company then appealed to the Federal District Court for protection, alleging a threatened violation of the Fourteenth Amendment. The case eventually reached this Court and was decided by

it February 18, 1924. The Court held that when a company was willing to surrender its charter rights and privileges the State had no right to compel it to continue operation at a loss, but adhered to the rule for which we contend here, and said:

> "So long as the railroad company 'continues to exercise' the privileges conferred by its charter, the state has power to regulate its operations in the interest of the public, and to that end may require it to provide reasonably safe and adequate facilities for serving the public, even though compliance be attended by some pecuniary disadvantage. *Atlantic Coast Line R. R. Co. v. North Carolina Railroad Commission,* 206 U. S. 26, 27 Sup. Ct. 585, 51 L. Ed. 933; 11 Am. Cas. 398; *Missouri Pacific Ry. Co. v. Kansas,* 216 U. S. 262, 279; 30 Sup. Ct. 330; 54 L. Ed. 472; *Chesapeake & Ohio Ry. Co. v. Public Service Commission,* 242 U. S. 603, 607, 37 Sup. Ct. 234, 61 L. Ed. 520."
>
> Railroad Co. of Texas, et al. v. Eastern Texas Railroad Company, 68 L. Ed. 309 (311). (Advance Opinions of March 15, 1924.)

Since that decision the Court has decided *Fort Smith Lt. & Traction Co. v. Bourland, et al.,* 45 Sup. Ct. Rep. 249, No. 220, October Term, 1924, in which it is said:

> "A railway may be compelled to continue the service of a branch or part of a line, although the operation involves a loss * * *. This is true even where the system as a whole fails to earn a fair return upon the value of the property. So far as appears, this company is at liberty to surrender its franchise and discontinue operations throughout the city. It cannot, in the absence of contract, be compelled to continue to operate its

> system at a loss * * *. But the Constitution does not confer upon the company the right to continue to enjoy the franchise and escape from the burdens incident to its use."

Neither of these two last cited cases involved the Interstate Commerce Act, nor Transportation Act, 1920, but in each of them the Court reiterates and restates the law as it had existed long prior to the Transportation Act of 1920. We submit, then, that the Transportation Act has not changed the applicable law; that insofar as it may attempt to do so in a case like this it is in violation of the reserved constitutional rights of the State, and that the State still has the right to require all necessary service so long as the company holds and enjoys its charter rights and privileges.

It may be said that this will leave the railroad company at the mercy of the State, but we do not think so. Under these authorities and this law, the State has the right to require—what? "Necessary facilities", "reasonably adequate facilities". When, if ever, the State undertakes to require more service or facilities than are necessary or adequate to the needs of the public, then will the all-sufficient provisions of the Federal Constitution shield and protect the company from every act of aggression or usurpation of power by the State. Then the question of financial loss will become an important circumstance in determining the reasonableness of the order. Until then that question, we reiterate, is not in this case.

V.

INTERSTATE COMMERCE COMMISSION HAS NO POWER OR AUTHORITY TO AUTHORIZE THE ABANDONMENT, AS RESPECTS INTRASTATE BUSINESS, OF A LINE OF RAILROAD WHOLLY WITHIN A STATE, OWNED AND OPERATED BY A CORPORATION OF THAT STATE.

The power and authority of the Interstate Commerce Commission over intrastate commerce being only such as may be incidental to the effective regulation and control of interstate and foreign commerce, it is not vested with power or authority to release and discharge a railroad company from "a *primal* duty which is coterminous with its powers", without the consent of the State. It has no power to release a party from a contractual obligation which the company "undertakes to do in return for those powers". It cannot declare a charter "binding in favor of the corporation as to all rights conferred upon it, and devoid of obligations as to duties imposed".

The respective rights and duties of the parties to such a contract is essentially a judicial question for the courts and not for the Commission to decide.

In *Northern Securities Company v. United States*, 193 U. S. 347 (349), this Court said:

> "The regulation or control of purely domestic commerce is, of course, with the State, and Congress has no direct power over it so long as what is done by the State does not interfere with the operations of the general government, or any legal enactment of Congress."

This reserved power of the State has not been and could not be wrested from it and delegated to the Interstate Commerce Commission.

VI.

NO QUESTION OF DISCRIMINATION AGAINST INTERSTATE AND FOREIGN COMMERCE, NOR OF THE CONSTRUCTION OF ANY NEW PLANT OR FACILITY, OR OF RATES, IS INVOLVED IN THIS CASE.

Several cases involving questions of discrimination against interstate and foreign commerce, and the construction of entirely new plants or facilities, rates, etc., have been before this court since the Transportation Act, 1920, became effective. New York v. United States, 257 U. S. 591; Railroad Commission of California v. Southern Pacific Company, 264 U. S. 331; Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co., 257 U. S. 563, and others.

In those cases the court has construed the Act and discussed its provisions, but none of them, so far as we are able to see, deals with the primal duty of the carrier to provide necessary facilities, over a line already constructed and in operation, while holding and enjoying its charter rights and powers.

In numerous other instances this Court has held that in the matter of the regulation of railroads which are being operated in interstate and intrastate business the power and authority of the federal government is supreme over that of the states; but this case does not involve any question of that sort.

This is not a case of discrimination against interstate and foreign commerce. The state is not here attempting to give to intrastate commerce some rate, advantage, privilege, benefit or right which is denied to or not enjoyed by interstate and foreign commerce. If it were, we concede that the paramount power and author-

ity of the Federal Government could prevent any such action, even though there was a specific charter contract by which that end was sought to be accomplished, as was the case in New York v. United States, 257, U. S. 597. None of these questions is involved in the case at bar. What is sought here is the recognition of the state's reserved Constitutional right to regulate and control the instrumentalities of its purely intrastate commerce.

Obviously the question of the construction of an entirely new extension, branch or facility, is altogether different from the furnishing of a necessary service over a line already constructed and operated for many years.

> "So far, therefore, as this class of transportation (intrastate) as an element of commerce, is affected by the statute under consideration, it is not subject to the constitutional provision concerning commerce among the states. It has often been held by this court, and there can be no doubt about it, that there is a commerce wholly within the state, which is not subject to the constitutional provision, and the distinction between commerce among the states and the other class of commerce between citizens of a single state, and conducted within its limits exclusively, is one which has been fully recognized in this court, although it may not be always easy, when the lines of these classes approach each other, to distinguish between the one and the other."
>
> Louisville, N. O. & T. Ry. Co. v. State of Mississippi, 133 U. S. 587, 591.

We earnestly submit that the language above quoted, while employed many years prior to the Transportation Act, 1920, forcefully and clearly states the rule of law applicable to the case at bar.

VII.

NO EVIDENCE OR FINDING THAT THE RAILWAY COMPANY IS NOT EARNING A FAIR RETURN ON THE VALUE OF ITS PROPERTIES AS A WHOLE.

A common carrier is entitled to earn a fair and reasonable return on the present fair value of its property reasonably used and useful in the service of the public. Where it is shown that the carrier's net railway operating income for the past seven years has averaged $2,450,000.00 annually (R. 156, 157, 229) and that the smallest one of those years was almost $1,500,000.00, it cannot be known that the company is not getting a fair return unless the value of its property is ascertained. In this case there was no evidence (R. 179) and no finding as to either the value of the property or the reasonableness of the return.

The only evidence even remotely concerning value is that the undepreciated capital account carried on the books as investment in road and equipment is $81,591,197.37 (R. 226); that much of this was purchased in the first instance with stocks and bonds (R. 84) and that the Colorado valuation of the company's property for the years 1920 and 1921, for taxes, was $23,981,720, which is the full cash value as sworn to by some officer of the company and fixed by the Colorado State Tax Commission (R. 106). The Interstate Commerce Commission had not completed the valuation of the property and there were no figures introduced in evidence to show that value (R. 179).

Such being the facts, we submit that there is nothing in this case to indicate that the railway company is not making and earning a fair and reasonable return on its property.

Where, then, does any undue burden on interstate and foreign commerce appear? If the company is earning a fair and reasonable return, or more, on its properties, how will the continued operation of this little line in intrastate business "burden or affect interstate and foreign commerce" or "burden or cripple" the company's other lines "and thereby affect their utility or service as arteries of interstate and foreign commerce?"

So far as appears, the only effect of closing this line might possibly be to increase by a few pennies the dividends to be paid the stockholders. That could just as well be accomplished by relieving the company of its obligation to pay taxes, or the interest on its bonded debt.

In the case at bar the Commission apparently authorized the abandonment of the line because, considered by itself, it was not a paying proposition. Whether the Company was nevertheless earning a fair and reasonable return was not determined. The Commission should have given consideration to the business of the carrier as a whole, and the effect of the alleged losses on that business. Such has been its practice in other cases before it.

In Finance Docket 1264, Re Green Bay & Western R. R. Co., 70 I. C. C. 251, the Commission said:

> "It has been uniformly held that the cessation of a particular service is not to be justified merely because it results in a loss, considered by itself, and that consideration must be given to the business as a whole."

Why that rule was not applied to the case at bar we do not know, but that it should have been seems obvious.

VIII.

SEPARATE CONSIDERATION SHOULD HAVE BEEN GIVEN TO THE INTRASTATE BUSINESS OF THE RAILWAY COMPANY.

Where a public service company is engaged in both interstate and intrastate business, it cannot be said that one "would or might burden or cripple" the other unless and until the value of the property and the revenues and expenses incident to each are separately considered. In this case no separation was made or attempted either by the company in its proof or the Commission in its findings.

Practically 80% of the company's owned and operated lines of railroad are in the State of Colorado (R. 24) but the record does not disclose what portion of its business is intrastate business within the state. Under such circumstances it would seem necessary for the Commission to make some inquiry concerning the results of intrastate operations before it could say that the future operation of this line in intrastate commerce will burden interstate and foreign commerce.

That such was the plain duty of the Commission has often been decided by the courts. The following will illustrate the point:

> "Where the business of the carrier is both interstate and intrastate, the question whether a scheme of maximum rates fixed by the State for intrastate transportation affords a fair return must be determined by considering separately the value of the property employed in the intrastate business and the compensation allowed in that business under the rates prescribed. This was also ruled in the Smyth case. The reason, as there stated, is that the State cannot justify unreason-

ably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on interstate business, and, on the other hand, the carrier cannot justify unreasonably high rates on domestic business because only in that way is it able to meet losses on its interstate business."

Simpson v. Shepard (Minnesota Rate Case), 230 U. S. 352-33 Sup. Ct. Rep. 729.

Further along in the same opinion, Mr. Justice Hughes, speaking for the court, said:

"When rates are in controversy, it would seem to be necessary to find a basis for a division of the total value of the property independently of revenue, and this must be found in the use that is made of the property. That is, there should be assigned to each business that proportion of the total value of the property which will correspond to the extent of its employment in that business."

Again the court said:

"For the purpose of determining whether the rates permit a fair return, the results of the entire intrastate business must be taken into account."

Again:

"As neither the share of the expenses properly attributable to the intrastate business, nor the value of the property employed in it, was satisfactorily shown, and hence it did not appear upon the facts proved that a fair return had been denied to the company, we are of the opinion that the complainant failed to sustain his bill."

In another case, the Court said:

"In this state of the facts we agree with the views of the Supreme Court of Arkansas, as dis-

closed in the opinion contained in the record and which were to the effect that the correct test was as to the effect of the Act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company cannot claim the right to earn a net profit from every mile, section or other part into which the road might be divided, or attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the Act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the Act within the limits of the State of Arkansas."

St. Louis & S. F. R. R. Co. v. Gill, 156 U. S. 649, 665-6; 39 L. Ed. 567.

"The plaintiff is entitled to a fair return upon the value of the property used and useful in conducting its telephone business. *City of Houston v. Southwestern Bell Telephone Co.*, 257 U. S. 42 Sup. Ct. Rep. 486, 66 L. Ed., decided May 29, 1922. In order to determine what is a reasonable return, it is essential to know the value of the property devoted to the business under consideration. This application for injunction is limited to telephone exchange rates which are alleged to be exclusively intrastate. Of course, there is intrastate toll service also; but no complaint is made as to toll rates. In considering intrastate rates, the value of property used in intrastate business should be consid-

ered separately, and not in connection with the value of property used in interstate business. *The Minnesota Rate Case*, 230 U. S. 352, 33 Sup. Ct. Rep. 729, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916 A 18.

* * * The value of the intrastate exchange property and facilities alleged to be devoted to intrastate service is not anywhere shown by the bill or supporting affidavits. The estimate that 89 per cent of the total value of plaintiff's property is devoted to intrastate service, including intrastate toll service, and that 11 per cent is devoted to interstate toll service, is not a satisfactory basis on which to conclude that rates for the intrastate exchange service are confiscatory.

* * * There is no separation of values, revenues, cost of operation, or earnings, either as between interstate and intrastate business, or as between intrastate exchange and toll business.

* * * The burden, therefore, remained upon the plaintiff, as the moving party, to separate not only its interstate from its intrastate telephone business, but also its intrastate toll business, and to show by facts, and not by estimates, that the rates attacked were not sufficient to enable it to earn a fair return upon the value of its intrastate exchange business."

Cumberland Telephone & T. Co. v. Louisiana Pub. Serv. Com. et al., 283 Fed. 215 (218).

Such being the rule concerning rates, we submit that the argument applies with even greater force to a case like the one at bar.

In the case at bar the Commission did not attempt to separate the intrastate property and business from the interstate property and business. Indeed, there was no evidence before it from which it could have done so.

The company may be earning more than the lawful return on its purely intrastate business. If such should be the case, then the continued operation of this line, even at a loss, would not constitute any burden on interstate and foreign commerce.

The railway company should have shown these things; and the Commission should have investigated them and found as a fact what the true situation was.

IX.

PAST OPERATING RESULTS ON THE LINE IN QUESTION NOT SUFFICIENT TO SUPPORT THE ORDER OF THE COMMISSION.

> "An order of the Interstate Commerce Commission is void, and may be set aside by the court, when the Commission's findings are unsupported by evidence."
>
> *Baltimore & O. R. Co. v. United States,* 264 U. S. 79, decided March 3, 1924, 44 Sup. Ct. Rep. 317.

> "Facts conceivably known to the Interstate Commerce Commission, but not put in evidence, will not support an order of the Commission."
>
> *Baltimore & O. R. Co. v. United States, supra.*

We submit that there is not in the record made before the Commission one word of testimony, nor any exhibit or figures as to what it will cost the railroad company hereafter to operate the line in intrastate commerce.

There is no evidence whatever to show "that interstate and foreign commerce will be burdened or affected by a continuance of that businss". The only financial operating results testified to in the record, or illustrated by the Exhibits, are those experienced in the past when,

according to the company's contention, it was engaged in interstate and foreign commerce as well as in intrastate commerce.

This kind of evidence is of no value as to what future operating results will be, unless it also appears that in the future the company will be compelled to give approximately the same kind of service it has been accustomed to render in the past. This the record does not do.

The record does not disclose that the State of Colorado has ever ordered the company to operate any particular number of trains, nor how many trains the state may require it to operate in the future. Likewise, the record is wholly silent as to how many trains will need to be operated in the future to provide "necessary facilities" for handling the intrastate business. It may be that one train per week will be adequate. If so, how much will it cost to operate that train and what will the revenues be? Will the net result be a profit or a loss? The record fails to disclose an answer.

To say that because in the past, under plans and schedules of operation chosen by the company itself, the company has sustained some losses, it necessarily follows that in the future and under plans and schedules necessary and adequate to the public needs the company will continue to lose the same or any amounts of money, is to indulge in surmise and conjecture of the purest sort. But even if we must, in a case of this sort, judge the future solely by the past, still there is not sufficient evidence to support the order.

In the Chicago Junction Case, supra (Baltimore & O. R. Co. v. United States), the Supreme Court, in speaking of the duty of the Commission, said:

> "To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

The majority opinion of the Commission contains the following (R. 8):

> "From January 1, 1916, to May 31, 1923, the operating results of the branch line were:" Then follows a tabulation showing a deficit for the period of $147,587.00.

As we have already pointed out those figures deal with the history of operations as experienced in the seven years and five months covered. They deal with both interstate and intrastate business handled. They show the results obtained from all the trains which the company has operated on the line during that period. They do not show that "the continued operation" of the line in intrastate commerce would show the same results.

The majority opinion then says: "The record does not contain any assurance that future operations would show a more favorable result."

We submit that the record does not contain any evidence concerning the results of future operations. The railroad contented itself by submitting figures dealing with the past and present operations, and did not attempt to show that it would have to operate the same number of trains in the future as in the past. The burden of proof was not upon the state or any other protestant. The Commission made no inquiry as to future operations or the cost thereof, and there was no evidence relating to that question.

The next finding by the majority was:

> "The applicant's net railway operating income for 1921 and 1922 was $1,903,793.39 and $1,061,877.35, respectively. For the first 11 months of 1923 it was $664,723, *as shown by its monthly reports filed with us.*" (Italics ours.)

These monthly reports were not in evidence and are not in the record. Apparently they show a great and unexplained falling off in the net railway operating results, and in view of that fact it is fair to assume that they had considerable weight with the Commission. It may be that they constitute the basis of the order here in question. But this Court has held that they will not support an order.

Baltimore & O. R. Co. v. United States, supra.

The finding of the majority as to net railway operating income for the years 1921 and 1922 will not support the order in the absence of a finding as to the value of the property used in intrastate service, or the profitableness or unprofitableness of intrastate operations.

For aught that appears in the findings or the record, these net earnings may constitute a fair and reasonable return on the total value of all the company's property.

The next finding by the majority is:

> "The applicant's lines are not located and doing business wholly within the State of Colorado. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation."

The finding is not sufficient to sustain the order or the conclusion of the Commission set forth in the next paragraph, for the reason that the Commission made no separation of interstate and intrastate business or property. It merely finds that "it", the company, is required to bear or make good the deficit, etc. A finding that the company will have to bear or make good a loss sustained in the performance of a primal duty which it owes so long as it keeps and enjoys its charter rights, is not a finding that the performance of such a duty will unduly burden or cripple interstate commerce.

Will the continued operation of the line in purely intrastate commerce be a profit or a loss? And if at a loss, will the company have to make good that loss out of its interstate revenues? Or, will its intrastate business show a profit or a loss with this line in operation in intrastate business? Will the continued operation of this line in intrastate commerce so reduce the railway company's net operating revenue that it will not get a fair return on the present fair value of its used and useful property? These, we submit, were pertinent inquiries to which the Commission should have given consideration, but which it did not see fit to answer.

This brings us to the conclusion of the majority, which is as follows:

> "It clearly appears that, in the language of the Supreme Court in the case above cited, the large losses sustained in operating the branch line 'would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce'.
>
> * * * * * * *
>
> "It clearly appears that * * * the large losses sustained in operating the branch line, etc."

Clearly the Commission is here speaking of what has transpired in the past, and clearly it assumes that what has been in the past must continue into the future. Neither the conclusion reached, nor the assumption made, is supported by the record or the other findings of the Commission.

The majority opinion then disposes of the main contention made by the State of Colorado in the proceedings before the Commission in a paragraph as follows:

> "It is argued that the applicant's charter constitutes a contract between it and the State of Colorado, and that, therefore, it cannot abandon the branch line without the consent of the State. That is a question for the courts to decide."

Thus the majority passes the important question of the company's charter obligations and the State's rights squarely up to the Court. But, at the same time, by the order they in effect say to the railroad company: "The question of your obligation to the State is a question for the courts and we will not pass upon it; but, nevertheless, you may keep and enjoy all the benefits and privileges which the State granted you, and, by our order, you may shun and disregard the duties and obligations which you assumed. Abandon your line, tear up the tracks, remove the structures, disregard the rights of the State, confiscate the property of these citizens and industries, and then it will be beyond the power of the State to require you to furnish 'necessary facilities', 'adequate facilities'."

The record shows and the Commission found (R. 19) in its first report that the abandonment of this line would probably result in the loss of the large investments made by the people and industries located along the line. If, then, the Commission Order authorizing abandonment is allowed to stand, this will, in effect, amount to the taking of that property by administrative authority without due process of law.

Such taking of private property is not a matter within the discretion of the Commission. Public convenience and necessity implies that the interest of the public dependent on a line of railroad which has been operated for many years is to be considered as well as the right of the stockholders of the company to earn large dividends.

X.

OFFER OF RAILWAY COMPANY TO LEASE LINE IN QUESTION TO PROTESTANTS NO GROUND FOR ABANDONMENT.

The majority of the Commission seem to have attached considerable importance to the fact that counsel (R. 180) and a witness (R. 143) for applicant, but without any resolution of the directors (R. 143), offered to lease this line to protestants.

To what extent this may have influenced the majority in making the order attacked in this suit is not apparent, but that it must have had a considerable influence is evidenced by the fact that they saw fit to refer to it in their opinion. They say:

> "The applicant has offered to lease the line to the protestants at a nominal rental of $5.00 a year, *provided they will operate it, and pay the operating expenses and taxes.* The acceptance of this offer would enable the protestants to operate the line as an industry track or in any other manner acceptable to the state authorities." (Italics ours.)

That the defendant railway company has no right thus to sidestep and avoid its duties and obligations seems too apparent to warrant discussion. And by what stretch of the imagination it could be contended that there was any duty or obligation upon the part of the public or the protestants to assume a part of the railroad company's obligation and agree to pay a part of its taxes is wholly and entirely beyond our comprehension. And how the majority of the Commission could base, even in part, an order such as was here entered by them upon such a peculiar and unheard-of foundation, is indeed a most remarkable proposition and incident, and is worthy of the most careful consideration in determining the validity of the order.

XI.

THE MINORITY OPINION IS THE RIGHT ONE.

We submit that the majority opinion in this case is right and correctly states the law (R. 9-11). Among other pertinent things that opinion says:

> "Our certificate, therefore, should be restricted in this instance to abandonment in interstate and foreign commerce, unless we are prepared to find as a fact that the *continued operation* of this line in intrastate commerce will produce such injury. As nearly as I can determine, total abandonment will save applicant not more than $30,000 a year as a maximum. I am wholly unable to reach the conclusion that such a burden, *if continued,* would 'cripple' applicant's main line or 'affect its utility or service as an artery of interstate and foreign commerce', or that it would operate as an 'obstruction to' interstate commerce." (Italics ours.)

From this it will be observed that there was a specific finding by the minority that the "continued operation" of the line in intrastate commerce will not produce an undue burden upon interstate commerce within the meaning of the adjudicated cases. They specifically find that even if the losses which the company has sustained in the past will be continued in the future, still there is no showing of a burden on interstate commerce. But they do not find that those losses will be continued.

Thus we find in this case that six members of the Interstate Commerce Commission voted in favor of allowing this abandonment as to intrastate commerce and five Commissioners voted against it. We submit that the five members are right and that the lower court should have entered an order setting aside the order as made

by the majority insofar as said order purports to authorize or permit abandonment of said line as to intrastate commerce or the tearing up and removal of the tracks and structures thereof.

Respectfully submitted,

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Denver, Colorado, December 10, 1925.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 195

THE STATE OF COLORADO, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and The Colorado and Southern Railway Company, appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

BRIEF FOR THE UNITED STATES

OPINIONS

Circuit Judge Lewis and District Judges Symes and Phillips (R. 45) denied application for injunction and dismissed the petition without opinion (R. 41). The commission filed three reports, *Abandonment of Branch Line by Colorado & Southern Railway,* 72 I. C. C. 315; 82 I. C. C. 310; 86 I. C. C. 393.

JURISDICTION

The suit was commenced and the appeal was taken under Commerce Court Act, Ch. 309, 36 Stat. 539, and Urgent Deficiencies Act, Ch. 32, 38 Stat. 219, 220. The latter provides, "A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree," * * *.

STATEMENT

This appeal challenges the validity of the certificate of the Commission which authorizes Colorado & Southern Railway to abandon a segment of narrow gauge railroad, 29.42 miles in length and practically without traffic, located in an extremely rugged and mountainous region in Colorado, the continued operation of which creates mounting deficits.

The Colorado & Southern Railway Company, with its principal office in Denver, was organized under the laws of Colorado as a common carrier by railroad (R. 23, 24). Its main-track operated mileage, exclusive of side, industrial, switching, or yard tracks, is approximately 1,100 miles, with 144 miles in Wyoming, 83⅓ miles in New Mexico, and 872 miles in Colorado (R. 24). The main line extends from Wendover, Wyoming, where it connects with the main line of the Burlington, to Sixela,

N. M., where it connects with main line of Ft. Worth & Denver City, a distance of 588 miles, 134 in Wyoming, 83⅓ in New Mexico, and 370¾ in Colorado (R. 24). It also operates 291 miles of narrow gauge in Colorado (R. 24).

On November 30, 1921, the general balance sheet showed capital stock $48,000,000, of which $17,000,000 is preferred stock and $31,000,000 is common stock; unmatured funded debt, $49,358,900; investment in road and equipment, $79,280,888.66; profit and loss credit balance, $5,397,840.91. For the five years, January 1, 1916, to December 31, 1920, the net railway operating income totaled $13,723,554. For the first 11 months of 1921 the operations resulted in a net operating income of $1,869,401 (R. 19). In the last four or five years traffic on the line has largely decreased (R. 19).

On September 1, 1921, Colorado & Southern applied to the Interstate Commerce Commission, pursuant to paragraph (18) of section 1 of the Interstate Commerce Act (Ch. 91, 41 Stat. 477), for a certificate of public convenience and necessity authorizing it to abandon a segment of narrow gauge line (R. 16), located in an extremely rugged and mountainous territory in Chaffee County, Colorado, and extending from Buena Vista to Romley, a distance of 29.42 miles (R. 16). The equipment consists of one locomotive, one combination baggage car and passenger coach, and a few box, coal, and flat cars (R. 17). The service consists of a mixed train which makes the round trip

three days a week (R. 17). There are several small communities along the branch which are not served by any other railroad. The total population of the tributary territory is estimated at 993. Buena Vista, which is served both by the branch and the Denver & Rio Grande, has 903 of the total, leaving only 90 up the line.

Colorado & Southern submitted a statement covering operations of the branch from January 1, 1916, to November 30, 1921, showing operating revenues, $80,603.50; operating expenses, $185,912.74; taxes, $106,716.87; interest, $145,550; total deficit, $357,576.11. Thus, over 70% of the total deficit consists of charges to interest and taxes. The branch is subject to Colorado & Southern's first mortgage, under which $19,400,000 in bonds are outstanding; and to its refunding and extension mortgage, under which $28,978,900 in bonds are outstanding (R. 18). The proposed abandonment would not reduce interest charges (R. 18), and there is doubt as to how much, if at all, taxes would be reduced (R. 19).

After a hearing, the commission, on July 28, 1922, observed that the operation of the line for the past four or five years had resulted in substantial losses (R. 19), and temporarily denied the application in the following words (R. 20): "Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating

results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application. It is not in the public interest that even a strong line like the applicant should permanently operate parts of its system that do not yield revenues sufficient to pay operating expenses and interest on the net scrap value of the property. Persons directly interested in the continued operation of the line should cooperate to the fullest extent possible with the management of the road with the view of effecting more favorable operating results."

On May 19, 1923, Colorado & Southern filed a petition to reopen the case, which was granted. Further hearing established that the anticipated improvement in operating results had not materialized (R. 22). For the year 1922 operating revenues were $5,813.91, operating expenses $30,654.28, and taxes $28,838.42. For the first five months of 1923 operating revenues were $1,788.18; operating expenses, $15,401.79; and taxes, $12,016.01. The total tonnage transported in 1922 was 1,865 tons, and in the first five months of 1923 357 tons (R. 22). In an endeavor to increase the traffic, in the latter part of 1922 the rate on ore to the smelter at Leadville was reduced 50 cents a ton (R. 22). Unusually severe winter, shopmen's strike, and failure of owners and operators of mines to invest money in their properties were asserted by protestants as reasons for further time

for developments (R. 22), and their case then rested largely upon "optimistic predictions and hopes" (R. 22). The commission said, "upon the facts presented we find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question" (R. 22). On September 24, 1923, certificate was issued accordingly (R. 23).

On February 11, 1924, the commission filed its third report on further argument (R. 7). Reaffirming its former findings and action, the commission further found that from January 1, 1916, to May 31, 1923, the operating results of the branch were, operating revenues $88,588.04, operating expenses $236,185.04, and taxes $157,244.35. It did not appear how much the taxes would be reduced through the proposed abandonment, and by eliminating that item the deficit in net operating revenues was $147,597. Except superintendence, practically all operating expenses are direct charges to the branch (R. 8). The operating revenues decreased from $25,507.68 in 1916 to $5,813.91 in 1922, and to $1,788.18 for the first five months of 1923. The number of passengers carried decreased from 3,711 in 1916 to 725 in 1922, and to 185 in the first five months of 1923 (R. 8). There was no assurance that future operations would show a more favorable result (R. 8). Colorado & Southern's net railway operating income for 1921 and 1922 was $1,903,793.39 and $1,061,877.35, re-

spectively. The large losses sustained in operating the branch line "would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce." The commission said that "upon the facts presented we affirm the findings in our former report, 82 I. C. C. 310, and find that the present and future public convenience and necessity permit the abandonment by the applicant of the branch line of railroad in question" (R. 9). Accordingly, on February 11, 1924, the amended certificate of public convenience and necessity was issued (R. 11), effective six months from the date thereof, the same to replace the previous certificate.

The State of Colorado then filed the petition, July 15, 1924 (R. 1), and charged the order was void because of (*a*) lack or inadequacy of evidence; (*b*) insufficient findings; (*c*) violation of contract between Colorado & Southern and the State (*d*) inclusion of intrastate commerce; and (*e*) failure of the State to consent to the terms of the certificate. Injunction was prayed against the enforcement of the order or the carrying out of the same (R. 6).

The United States (R. 39), the commission (R. 12), and Colorado & Southern (R. 23) filed separate answers, and after hearing (R. 45) the petition was dismissed on final decree (R. 41).

STATUTE

Paragraphs (18), (19), (20), (21) and (22) (Ch. 91, 41 Stat. 477), section 402 (Ch. 91, 41 Stat. 476), Transportation Act, 1920 (Ch. 91, 41 Stat. 456), follow in *extenso*.

> (18) After ninety days after this paragraph takes effect no carrier by railroad subject to this act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment.
>
> (19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the commission may from time to time prescribe, and the provisions of this act shall apply to all such proceedings. Upon

receipt of any application for such certificate the commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20) The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of

this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to or permits any violation of the provisions of this paragraph or of paragraph (18) of this section shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

(21) The commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this act and to extend its line or lines: *Provided,* That no such authorization or order shall be made unless the commission finds, as to such extension, that it is reasonably required in the interest of such public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this act which refuses or neglects to comply with any order of the commission

made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(22) The authority of the commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

QUESTION

On the undisputed important facts had the commission power to issue in its present form the amended certificate of public convenience and necessity?

ARGUMENT

SUMMARY

I. The report of the House Committee on Interstate and Foreign Commerce indicates the full reasons and purposes for the enactment of the statute which was a regulation of interstate commerce (*Stafford* v. *Wallace*, 258 U. S. 495, 512, 513; *Church of Holy Trinity* v. *United States*, 143 U. S. 457, 463; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 316, 320; *Standard Oil Co.*

v. *United States,* 221 U. S. 1, 50; *United States* v. *Wabash Railway,* January 18, 1926).

II. The statute was a valid exercise of Congressional power (*State of Texas* v. *Eastern Texas Railroad,* 258 U. S. 204; *Railroad Commission* v. *Eastern Texas Railroad,* 264 U. S. 79).

III. The staggering deficits in the operation of the Buena Vista-Romley branch constitute such a drain on an artery of interstate commerce as to call for the issuance of the certificate (*State of Texas* v. *Eastern Texas Railroad,* 258 U. S. 204; *Railroad Commission* v. *Eastern Texas Railroad,* 264 U. S. 79).

IV. In *State of Texas* v. *Eastern Texas Railroad,* this Court said of the Eastern Texas Railroad, thus clearly distinguishing it from the case at Bar (258 U. S. 217), "It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce." These words precisely describe the situation in the present case and the commission acted accordingly (R. 22, 82, I. C. C. 311; R. 9, 86 I. C. C. 395).

V. The fact that commerce both interstate and intrastate may move over the branch does not invalidate the certificate (*United States* v. *Village of Hubbard,* 266 U. S. 474; *Railroad Commission of Wisconsin* v. *C., B. & Q. R. R.,* 257 U. S. 563; *State of New York* v. *United States,* 257 U. S. 591;

Shreveport Case, 234 U. S. 342; *American Express Co.* v. *Caldwell,* 244 U. S. 617; *United States* v. *State of Tennessee,* 262 U. S. 318).

VI. The contract claimed between the State and Colorado & Southern may not prevail against the paramount power of Congress through the Commission to regulate interstate and foreign commerce (*State of New York* v. *United States, supra; United States* v. *Village of Hubbard, supra*).

I

THE LIGHT OF THE ENVIRONMENT IN WHICH CONGRESS PASSED THE EXTENSION AND ABANDONMENT ACT

Congressman Esch (Wisconsin), Chairman House Committee on Interstate and Foreign Commerce, on November 11, 1919, in reporting the Railroad Bill to the Committee of the Whole House on the State of the Union, said:

> In section 402 we treat of extensions and abandonments. We believe one main cause of the so-called " weak sister " has been the unrestricted right of railroads to be built wherever their projectors thought fit. As a result of this unrestricted right we find in all States of the Union cases where, after a road has been built and long maintained and has gotten its traffic well established, another road puts in a parallel line with the usual result that instead of having one strong road doing the traffic we have two weak roads, as they have to charge the same rate between

competitive points, and we burden the public by compelling it to sustain two weak roads when one strong road would have been sufficient.

How does this bill stop that? In this way: Before a road or an extension thereof can be built it must get what is called in this bill a certificate of convenience or necessity from the commission as a condition precedent to the building of a single rod of the extension or of the new line. That means that the commission must first investigate the situation. It must first consult the communities that would be connected or would be located on the proposed line. It must consult the shipping interests and producing interests and all other interests that might be involved and then determine whether or not it should issue a certificate of convenience and necessity.

This is not new law. Several of the States have this same kind of law now, notably the State of New York and the State of Wisconsin and other States, and the law has worked successfully. It has prevented the construction of new lines that could not by any possibility have any hope of meeting operating expenses, not to say anything about profits. It would prevent the construction of some of these short lines which may have no hope of ultimate financial success. In every way we have felt that this provision would lessen the number of "weak sisters," would prevent the creation of any new ones, and would strengthen the exist-

ing lines. We can get better service by strengthening the existing line than by creating a rival or parallel line which would diminish the ability of the first line to make further improvements and betterments. We have also provided for abandonments.

Railroads sometimes desire to surrender the rights granted by their charter. The traffic is not what they expected, business conditions change, the natural resources they thought first to get out to the open market become depleted or become exhausted. There is no power now to restrain abandonment under Federal law. Railroads in many States can do as they will. We provide that there shall be some Federal control over the matter of abandonment, so that cities and villages that have been built up on these lines can be given due consideration by the regulatory body before the order for abandonment is issued. We give such control to the commission to investigate the situation and determine the facts. But neither provision, the building of new lines or the abandonment of old ones, affects spurs or switches or terminal tracks or interurban lines wholly within a State. These we leave to State control, where they already belong (Con. Rec., vol. 58, pt. 8, 8309, 8316).

In *Stafford* v. *Wallace*, 258 U. S. 495, 512, 513, in sustaining the constitutionality of the so-called Packers and Stockyards Act of 1921 (Ch. 64, 42 Stat. 159), this Court, speaking through Mr. Chief Justice Taft, said:

> We have framed the statement of the case, not for the purpose of deciding the issues of fact mooted between the packers and their accusers before the Federal Trade Commission or the Committees on Agriculture in Congress, but only to enable us to consider and discuss the act whose validity is here in question in the light of the environment in which Congress passed it. It was for Congress to decide from its general information and from such special evidence as was brought before it the nature of the evils actually present or threatening, and to take such steps by legislation within its power as it deemed proper to remedy them. It is helpful for us in interpreting the effect and scope of the act in order to determine its validity to know the conditions under which Congress acted (*Chicago Board of Trade* v. *United States,* 246 U. S. 231, 238; *Danciger* v. *Cooley,* 248 U. S. 319, 322).

This statute is a regulation of interstate commerce. By the Transportation Act of 1920 it was passed as an amendment to the Interstate Commerce Act. It should therefore be construed as an amendment and not as a new and original act.

The Transportation Act of 1920 " introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy,* 257 U. S. 563, 585. * * * The new purpose was expressed in unequivocal language, and to attain it, new rights, new obligations, new machinery, were created. The new pro-

visions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service." *New England Divisions Case,* 261 U. S. 184, 189.

The one subject above all others with which the Transportation Act deals is the *revenue* of the carriers.

In *Terry* v. *Anderson,* 95 U. S. 628, 634, this Court, speaking through Mr. Chief Justice Waite, said:

> The business interests of the entire people of the State had been overwhelmed by a calamity common to all. Society demanded that extraordinary efforts be made to get rid of old embarrassments and permit a reorganization upon the basis of the new order of things.

The foregoing section is closely interlocked with other equally important sections, all of which make up the complete scheme of legislation frequently referred to by this Court. References to other sections are set forth in Appendix A.

II

THE ENACTMENT OF THE STATUTE WAS A VALID EXERCISE OF CONGRESSIONAL POWER

These particular portions of the statute received the mature deliberation of this Court after full arguments in *State of Texas* v. *Eastern Texas Railroad,* 258 U. S. 204. Eastern Texas Railroad, a

Texas corporation, owned and operated *in that State* a line of railroad 30.3 miles in length. Three-fourths of its traffic moved in interstate and foreign commerce and the remainder in intrastate commerce (258 U. S. 214). The company neither owned nor operated any other line and claimed to be operating at a loss. On application and after hearings the Interstate Commerce Commission issued the certificate of public convenience and necessity for abandonment of the line. In appropriate equity proceedings the State of Texas claimed that the Transportation Act did not afford any basis for granting a certificate sanctioning the abandonment of the company's line as respects intrastate commerce, and if it did it was unconstitutional as an encroachment on the reserved powers of the State (258 U. S. 216). This Court then stated the question, "The only matters in controversy are whether, by paragraphs 18, 19, and 20, Congress has assumed to clothe the Commission with authority to sanction *the entire abandonment of a road such as this,* and if so, whether the power of Congress extends so far " (italics ours) (258 U. S. 216).

In holding that the certificate should be restricted so as to include interstate and foreign commerce only, this Court, speaking by Mr. Justice Van Devanter, said:

> The road lies entirely within a single State, is owned and operated by a corporation of that State, *and is not a part of an-*

other line. Its continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce *will not be burdened or affected* by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.

If paragraphs 18, 19 and 20 be construed as authorizing the commission to deal with the abandonment *of such a road* as to intrastate as well as interstate and foreign commerce, a serious question of their constitutional validity will be unavoidable. If they be given a more restricted construction, their validity will be undoubted. Of such a situation this Court has said, "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter" (*United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407–408).

Although found in the Transportation Act, these paragraphs are amendments of the Interstate Commerce Act and are so styled. They contain some broad language, but do not plainly or certainly show that they are intended to provide for the complete abandonment of a road *like the one we*

> *have described.* Only by putting a liberal interpretation on general terms can they be said to go so far. Being amendments of the Interstate Commerce Act, they are to be read in connection with it and with other amendments of it. As a whole these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce (*Minnesota Rate Case,* 230 U. S. 352, 418; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563). And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared. This was not done (italics ours).

With the single exception of *Colorado & Southern* v. *Railroad Commission,* 54 Col. 64, 90, 91, 93, opposing counsel cite neither case nor statute of the State to sustain any right claimed by the State or any proposition which they have argued. That case is cited to support the undisputed but inapplicable proposition that railways are organized and

operated not for the profit of the company alone, or that of its stockholders, but for the benefit of the public as well (Br. 15, 24, 25). With equal force it may be said that the issuance of the certificate is in the public interest; at least the commission, the body " appointed by law and informed by experience," has so determined after three hearings.

In *Railroad Commission* v. *Eastern Texas Railroad,* 264 U. S. 79, 85, this Court, in affirming decrees of the District Court, authorized the Eastern Texas Railroad to withdraw from instrastate commerce and to dismantle and abandon its road as a losing venture. In that case the State relied on two statutory provisions of the State, neither of which was held sufficient. The principle reaffirmed by that case is thus stated in the opinion by Mr. Justice Van Devanter:

> So long as the railroad company " continues to exercise " the privileges conferred by its charter the State has power to regulate its operations in the interest of the public, and to that end may require it to provide reasonably safe and adequate facilities for serving the public, even though compliance be attended by some pecuniary disadvantage (*Atlantic Coast Line R. R. Co.* v. *North Carolina Corporation Commission,* 206 U. S. 1, 26; *Missouri Pacific Ry. Co.* v. *Kansas,* 216 U. S. 262, 279; *Chesapeake & Ohio Ry. Co.* v. *Public Service Commission,* 242 U. S. 603, 607). But this rule in nowise

militates against the principle that the company may withdraw its property from use by the public " when that use can be kept up only at a loss" (*Brooks-Scanlon Co.* v. *Railroad Commission of Louisiana, supra*).

Even if there were contractual relations, statutory, charter, or other, between the Colorado & Southern and the State, they may not prevail over the paramount power of Congress through the Commission to regulate interstate and foreign commerce (*State of New York* v. *United States*, 257 U. S. 591; *United States* v. *Village of Hubbard*, 266 U. S. 474).

If the State has power to prohibit the abandonment of the Buena Vista-Romley branch and to compel the continued operation thereof, what may happen? Every trunk-line interstate railroad operating in two or more States must, in each instance, separately apply to the Interstate Commerce Commission and to the State for a certificate of public convenience and necessity to abandon any useless branch, however unprofitable, and, in each instance, any action of either authority may be reviewed by the courts. Moreover, the same course must necessarily be pursued with respect to applications for similar certificates to construct extensions or new lines. Construction of new lines and extensions and the abandonment of old lines or branches are treated as one subject, and under

the regulatory power, whether State or Federal, the same procedure applies to each.

The commission has found, and the undisputed facts show, the mounting deficits in the continued operation of the branch. Colorado & Southern is concededly an interstate carrier, with its property located in three States. The operation of the branch is and has been a serious drain upon the resources of the company. Even if a segregation of the intrastate commerce from the interstate commerce were possible, the operation of the branch for intrastate commerce alone obviously would create far greater deficits than those which now exist and the drain on the artery of interstate commerce would go on. If the power of Congress and the authority of the Commission are not now supreme, then it is within the power of the States in which the Colorado & Southern operates to destroy it. To restrict the certificate so as to include intrastate commerce only means that this trunk-line carrier, operating in three States, must try its case anew, as in *Railroad Commission* v. *Eastern Texas Railroad,* 264 U. S. 79. This is not the case of the Colorado & Southern undertaking to abandon its charter obligations and to pull up its tracks and dismantle its property in three States.

The power of Congress or its appropriate agencies over practically all functions and activities of interstate carriers, without regard to distinctions between interstate and intrastate commerce, is now well established (see Appendix B).

III

THE NET RAILWAY OPERATING INCOME OF COLORADO & SOUTHERN

Opposing counsel complain of the following finding (R. 9, Br. 43):

> The applicant's net railway operating income for 1921 and 1922 was $1,903,793.39 and $1,061,877.35, respectively. For the first 11 months of 1923 it was $664,723, as shown by its monthly reports filed with us.

They say "These monthly reports were not in evidence and are not in the record," and "it is fair to assume that they had considerable weight with the Commission," and " It may be that they constitute the basis of the order here in question" (Br. 44).

Counsel do not appear to question the accuracy of the figures for the years 1921 and 1922 for, they say, " The finding of the majority as to net railway operating income for the years 1921 and 1922 will not support the order in the absence of a finding as to the value of the property used in intrastate commerce," etc. (Br. 44). With all of the emphasis of italics, they do challenge the finding " For the first 11 months of 1923 it was $664,723 as shown by its monthly reports filed with us" (Br. 43).

For 1922 the Company reported net railway operating income of $1,061,877.35 (R. 231), and for 11 months of 1921 it reported $1,869,401 (or $34,392.39 less than $1,903,793.39, with the month of December missing). The net railway operating

income for December, 1921, does not appear in the record. Dividing $1,903,793.39 by 12, the average per month is $158,649.45. To allow $34,392.39 for December, therefore, is not unreasonable. In any case, as already pointed out, those figures are not challenged.

Even if the figures, $664,723, as shown by the reports filed with the Commission, are not considered, there is still ample, separate and apart therefrom, to sustain the order.

In *United States* v. *Abilene & Southern Railway*, 265 U. S. 274, 287, it was said, "The parts of the annual reports in question were used as evidence of *facts which it was deemed necessary to prove* * * * (italics ours)." Without the finding complained of in the instant case there is ample evidence to support the order, and the finding is not necessary, as the exhibit was in the *Orient Divisions Case, supra.* The absence of the finding complained of obviously would not have made the slightest difference in the result.

IV

CONCLUSION

The judgment of the District Court was right and should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

FEBRUARY, 1926.

APPENDIX A

(*Ante*, p. 17)

Section 400, par. (5), provides that all charges made for any service rendered or to be rendered in the transportation of passengers and property shall be just and reasonable (Ch. 91, 41 Stat. 475).

Section 407, par. (1), provides that under certain terms and conditions the Commission shall have authority by order to approve and authorize, if assented to by all of the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions as shall be found by the Commission to be just and reasonable in the premises (41 Stat. 481).

Section 407, par. (2), provides that under the authority of the Commission, on application of any carrier or carriers, that the acquisition to the extent indicated by the Commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition (41 Stat. 481).

Section 407, par. (4), provides that the Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into

a limited number of systems in such a way that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties (41 Stat. 481).

Section 407, par. (6), provides that two or more carriers may consolidate their properties, or any part thereof, into one corporation for the ownership, management, and operation of the properties (41 Stat. 481).

Section 407, par. (7), provides that the Commission is authorized to approve the consolidation of four express companies into one company (41 Stat. 482).

Section 416, par. (3), provides that the Commission is authorized to revise any charge or practice which causes any undue or unreasonable advantage to accrue to persons or localities interested in intrastate transportation as against interstate transportation, and State authorities shall be notified when rates made by them are in issue (41 Stat. 484) (*Railroad Commission of Wisconsin* v. *C., B. & Q. R. R.*, 257 U. S. 563).

Section 418, par (1), provides that the Commission is authorized to prescribe reasonable maximum or minimum, or maximum and minimum, rates for individual or joint transportation and to declare what individual or joint classification, regulation, or practice should be observed thereafter, and to establish joint rates and charges, the act setting forth principles to be observed in fixing joint rates (41 Stat. 484).

Section 418, par. (6), provides that the Commission may establish the division of joint rates

among carriers (41 Stat. 486) (*New England Divisions Case,* 261 U. S. 184).

Section 422 provides that the Commission is directed so to adjust rates as to allow to the railroads a fair return upon the aggregate value of their property as the value of that property shall be determined by the Commission; and as that value shall be entitled to consideration for rate-making purpose, 6 per cent shall be temporarily fixed and considered a fair return; the statute further directs that, inasmuch as it is impossible to fix rates which will adequately sustain all the carriers that are indispensable to the communities to which they render service without enabling some carriers to receive a net railway operating income substantially in excess of a fair return upon the value of the property used in the service of transportation, such excess shall be paid to the United States, to be held for two purposes—one half to be used as a reserve fund for such carrier and after a certain point has been reached the remainder to be usable by the carrier for any lawful purpose; the other half to be held by the Commission for a general railroad contingent fund, to be used in making loans to carriers or in purchasing equipment or facilities and leasing the same to carriers (41 Stat. 488–489) (*Dayton-Goose Creek Railway Co.* v. *United States,* 263 U. S. 456).

Section 422, par. (12), provides that a carrier may at any time make application to the Commission for a loan from the general railroad contingent fund (41 Stat. 490).

Section 422, par. (13), provides that a carrier may at any time make application to the Com-

mission for lease to it of transportation equipment or facilities purchased from the general railroad contingent fund (41 Stat. 490).

Section 439, par. (2), provides that carriers may not issue securities, even though permitted by the authority creating the carrier corporation, without the authorization of the Commission, and then only to the extent that, upon application by the carrier and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, the Commission may prescribe (41 Stat. 494).

In *Dayton-Goose Creek Railway Co.* v. *United States*, 263 U. S. 456, 478, this Court, speaking through Mr. Chief Justice Taft, said:

> The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination for intrastate commerce, to secure a fair return upon the properties of the carriers engaged.

APPENDIX B

(*Ante*, p. 23)

In all of the following subjects, as is inevitable, the carrier is treated as a unified instrumentality.

Agreements restraining interstate commerce forbidden (*Northern Securities Co.* v. *United States,* 193 U. S. 197).

Air brakes (Ch. 196, 27 Stat. 531; Ch. 87, 29 Stat. 85; Ch. 976, 32 Stat. 943, Ch. 160, 36 Stat. 298; *New York Central Railroad* v. *United States,* 265 U. S. 41).

Ash pans on locomotives (*Ash Pan Act,* Ch. 225, 35 Stat. 476).

Automatic train-stop or train-control devices, Section 26, Transportation Act, 1920 (Ch. 91, 41 Stat. 456, 498, 499; *Delaware & Hudson Co.* v. *United States,* 5 Fed. Rep. (2d) 831).

Bills of lading (*United States* v. *Alaska S. S. Co.,* 253 U. S. 113).

Block signals (*Joint Resolution,* 34 Stat. 838; *Urgent Deficiencies Act,* Oct. 22, 1913, Ch. 32, 38 Stat. 212).

Books of account and records of all business, including intrastate business (*Interstate Commerce Commission* v. *Goodrich Transit Co.,* 224 U. S. 194).

Car doors (*Loomis* v. *Lehigh Valley R. Co.,* 240 U. S. 43).

Color blindness, qualification of employees (*Nashville, C. & St. L. Ry. Co.* v. *Alabama,* 128 U. S. 96).

Contracts between employee and employer (*Patterson* v. *Bark Eudora,* 190 U. S. 169; *Robertson* v.

Baldwin, 165 U. S. 275; *McLean* v. *Arkansas*, 211 U. S. 539; *Erie R. Co.* v. *Williams*, 233 U. S. 685).

Distribution of equipment, coal cars (*Interstate Commerce Comn.* v. *Illinois Central R. Co.*, 215 U. S. 452; *Interstate Commerce Comn.* v. *Chicago & Alton R. Co.*, 215 U. S. 479; *United States* v. *New River Co.*, 265 U. S. 533).

Earnings, recapture of excess (*Dayton-Goose Creek Railway*, 263 U. S. 456).

Employers' liability (*Second Employers' Liability Cases*, 223 U. S. 1).

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Hours of service (*Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612; *Atchison, Topeka & Santa Fe* v. *United States*, No. 273, October Term, 1925).

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Locomotive boilers (*Boiler Inspection Act*, Ch. 103, 36 Stat. 913).

Locomotive headlights (*Atlantic Coast Line R. Co.* v. *Georgia*, 234 U. S. 280).

Pipe lines (*The Pipe Line Cases—Ohio Oil Co.* v. *United States*, 234 U. S. 548).

Pre-cooling and pre-icing of refrigerator cars (*Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 232 U. S. 199, 221).

Rates, increases in freight and passenger (*United States* v. *Village of Hubbard,* 266 U. S. 474; *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R.,* 257 U. S. 563; *State of New York* v. *United States,* 257 U. S. 591; *Shreveport Case,* 234 U. S. 342; *American Express Co.* v. *Caldwell,* 244 U. S. 617; *United States* v. *State of Tennessee,* 262 U. S. 318).

Running of separate trains instead of mixed freight and passenger trains (*Missouri Pacific Ry. Co.* v. *Kansas,* 216 U. S. 262, 269).

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1925.

No. 195

THE STATE OF COLORADO,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND THE COLORADO & SOUTHERN RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE COLORADO & SOUTHERN RAILWAY COMPANY, APPELLEE.

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GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE COLORADO & SOUTHERN RAILWAY COMPANY, APPELLEE.

STATEMENT OF THE CASE.

This is an appeal from a final decree of the District Court of the United States for the District of Colorado denying relief in a suit brought by the State of Colorado against the appellees above named to enjoin and set aside in part a certificate and order of the Interstate Commerce Commission authorizing The Colorado & Southern Railway Company (hereinafter referred to

as "the railway company",) to abandon a branch line of railroad approximately 29 miles in length located in Chaffee County, Colorado. It is sought to have the order set aside only in respect to intrastate commerce on this branch line.

The railway company is a Colorado corporation and operates in interstate commerce various lines in that state and extending into Wyoming and New Mexico. Included in these lines is the narrow-guage branch line in question, known as the Buena Vista-Romley Branch, authority to abandon operation of which it sought in a petition filed with the Interstate Commerce Commission Sept. 1, 1921, pursuant to paragraph 18 of Section 1 of the Interstate Commerce Act (41 Stat. L. 477).

BASIS OF APPLICATION.

The application, after describing the location of the line, in detail, as hereinafter set forth, alleged that the branch had been operated from Buena Vista to Romley for the purpose of affording transportation facilities to and from certain metalliferous mines located in the mountains westerly of Buena Vista; that practically all of such mines were then and had for a long time past been closed, and were not being and for a long time past had not been operated, with the result that said line of railroad extending from Buena Vista to Romley for many years last past had not been able to earn and was not earning its operating expenses; that so far as could be ascertained after diligent inquiry and investigation there was no prospect of a reopening of said mines; that during recent years the deficits sustained from the operation of said line of railroad had been increasingly heavy, amounting, including taxes, during the year 1919 to over $43,000, and during the year 1920 to over $51,000;

that the deficits sustained from the operation of said line of railroad for the first six months of 1921, including taxes, amounted to over $24,000. (Rec., 46.)

PROCEEDINGS BEFORE COMMISSION AND DISTRICT COURT.

The Interstate Commerce Commission made three different reports in the matter. *Abandonment of Branch Line by Colorado & Southern Ry.* 72 I. C. C. 315, (Rec., 15); *Abandonment of Branch Line by Colorado & Southern Ry.* 82 I. C. C. 310 (Rec., 21); *Abandonment of Branch Line by Colorado & Southern Ry.* 86 I. C. C. 393 (Rec., 7). In connection with the last named report the Commission on February 11, 1924, issued an amended certificate of public convenience and necessity (now sought to be set aside in part), wherein it authorized the abandonment of both interstate and intrastate operations of this branch line after six months from date. The Commission found that the continued operation as to intrastate commerce would constitute an undue burden upon interstate commerce and that large deficits from the operation of the branch line are reflected in the accounts of the railway company, which is an interstate carrier, and that "it is required to bear or make good the deficits from such operation." (86 I. C. C. 393; Rec., 9.) In making these findings the Commission expressly differentiated the facts of this case from those considered by this court in *Texas* v. *Eastern Texas Railroad Co.* 258 U. S. 204. The State of Colorado sought by a bill in equity to have the certificate and order set aside in respect to intrastate commerce on this branch line.

The District Court of the United States for the District of Colorado (Circuit Judge Lewis and District Judges Symes and Phillips sitting) on August 19, 1924, entered a decree denying preliminary and permanent

injunctions, dismissing appellant's bill of complaint and denying an application for an order suspending the order of the Interstate Commerce Commission pending appeal. (Rec., 41, 42.)

DESCRIPTION OF BRANCH LINE.

The branch line in question is described by the Commission as follows:

> "The branch line in question extends from Buena Vista in a southerly and westerly direction to Romley and includes certain trackage extending westerly from Romley to the Flora Bell Mine and Hancock, a total distance of 29.42 miles. It has no connection with any of applicant's other operated lines. Its eastern terminus at Buena Vista is approximately 29 miles southwest of Garos, Park County, Colo., through which point applicant's nearest operated line of railroad extends. This branch comprises a segment of a narrow-gauge line of railroad which was constructed during the years, 1874 to 1882 from Denver, across the Continental Divide by means of the Alpine Tunnel, to Gunnison and the Gunnison County coal fields. This railroad was continuously operated until 1910. At that time the line between Garos and Macune, a distance of 28.84 miles, and between Hancock and Quartz, a distance of 13.57 miles, including the Alpine Tunnel, was abandoned, and operation thereover has never been resumed. A large part of the abandoned track has been washed out and destroyed. Operation of that portion of the line from Quartz to its western terminus was taken over by the Denver & Rio Grande Railroad Company and has since been and is now being operated as a part of that company's system, with the exception of that portion thereof which parallels the Denver & Rio Grande Railroad between Parlin and Gunnison, a distance of 11.64 miles, which portion has also been abandoned and parts thereof destroyed. The applicant acquired ownership of the line in 1898. It has continued to operate the branch in question from Buena Vista to Romley for the purpose of furnish-

ing transportation facilities for certain communities, mining camps, and mines located in the mountains west of Buena Vista and east of the Continental Divide. The track is laid with 40-pound to 56-pound rail and the maximum grade is 4 per cent. The present service consists of a mixed train which makes the round trip three days a week. The equipment consists of one locomotive, one combination baggage car and passenger coach, and a few box, coal, and flat cars." (72 I. C. C. 315, at 316, 317.) (Rec., 16.)

This branch connects at Buena Vista and interchanges traffic with the main line of the Denver & Rio Grande Railroad (now known as the Denver & Rio Grande Western) an interstate carrier. (Rec., 73, 84, 86, 90, 92.) The Denver & Rio Grande has a three-rail line between Buena Vista and Leadville (Rec., 90) permitting interchange of business at Buena Vista without transfer from narrow gauge to broad gauge equipment. (Rec., 92.) At Leadville the Denver & Rio Grande connects and interchanges business with the narrow gauge line of the Colorado & Southern from Leadville to Denver. (Rec., 60; Map, Rec., 97.) At Pueblo the Denver & Rio Grande connects and interchanges business with the broad gauge main line of the Colorado & Southern. (Rec., 84, 86.)

NATURE OF TERRITORY SERVED.

The territory served by the branch line is described by the Commission as follows:

"The territory traversed by the branch is described as extremely rugged and mountainous. The principal industry is mining, but there has been a small agricultural and lumbering development. The only town of importance served by the branch is Buena Vista, with a population of 903. This town is also served by the Denver & Rio Grande Railroad. There are several small communities along the line which are not served by any other railroad. The distances from these points to another railroad

> range from 5.4 miles to 21.29 miles. The population of the territory tributary, including the population of Buena Vista is estimated by the applicant at 993." (72 I. C. C. 315, at 317.) (Rec., 17.)

The elevation of Buena Vista is 7,955 feet above sea level. Almost due west from Buena Vista the three college peaks, Princeton, Harvard and Yale, tower to heights in excess of 14,000 feet. The railroad in question skirts the base of Mt. Princeton and near the station called Mt. Princeton enters the narrow and precipitous canyon or gorge along which its roadbed of sharp curves and severe grades climbs and winds toward the Continental Divide. (Rec. 94, 89, Map, Exhibit 14, Rec. 160; Map Exhibit 15, Rec 160.) The road ascends 3,062 feet between Buena Vista and Hancock, while between Nathrop and Hancock, or a distance of 21.4 miles, it ascends 3,322 feet, Nathrop being 260 feet lower than Buena Vista.

There are grades at every point on the line, the grade from Mt. Princeton being continuously very heavy. The maximum grade is 4 per cent. (Rec., 88.) 37 per cent of the line is curved, the maximum curvature being 29 degrees. (Rec., 89.)

One engine and crew can safely handle only 15 loads down the mountain from Romley and going up the mountain they can handle only 110 tons. (Rec., 94.)

This line from Buena Vista to Romley is subject to both wash-ins and wash-outs. These wash-ins occur three or four times in a summer at as many as five places. Heavy cloudbursts in the mountains and heavy rains wash gravel off of Chalk Mountain and the heavy rains take it down to the track and sometimes take the track out and at other places fill it up on top anywhere from 30 to 50 feet in length and 5 to 6 feet in height. This

material washed in is extremely hard stuff to handle. When it is wet it sticks to a shovel and is hard to remove, and when it gets dry it becomes hard and solid like cement. (Rec., 96.)

The only station agent on the entire line is located at Buena Vista. (Rec., 90.) The only stations where there are people living are at Mt. Princeton, with a population of 12 and an altitude of 8,181 feet; Fisher, with a population of 6 and an altitude of 9,259 feet; St. Elmo, with a population of 37 and an altitude of 10,053 feet; Romley, with a population of 25 and an altitude of 10,535 feet; and Hancock, with a population of 10 and an altitude of 11,017 feet. (Rec., 73, 94.)

It appears that the population of these communities was generally less in 1920 than it was 20 years ago, this being true even at Buena Vista. (Rec., 73, 93.) While the total population along the line was only 993, including Buena Vista with 903, yet only 90 people were really dependent on the line for railroad facilities, since Buena Vista is served by the Denver & Rio Grande main line from Denver to Salt Lake.

THE COMMISSION'S FINAL REPORT.

In its third and final report in the proceedings before it, the Interstate Commerce Commission, after reviewing the evidence showing operating deficits and other material facts, found:

> "The protestants contend that paragraphs (18) to (21), inclusive, of section 1 of the act, in so far as they may attempt to confer exclusive jurisdiction upon us to permit the abandonment of lines of railroad located and doing business wholly within the state of Colorado and engaged in its intrastate commerce, are unconstitutional. The case of *Texas* v. *Eastern Texas R. R. Co.* 258 U. S. 204, is relied upon to support such contention. In our opinion the

conclusion therein reached does not apply to the facts in the present case. The applicant's lines are not located and doing business wholly within the State of Colorado. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation. It clearly appears that, in the language of the Supreme Court in the case above cited, the large losses sustained in operating the branch line 'would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.' We are of opinion that we have jurisdiction." (86 I. C. C. 393, at 395.) (Rec., 9.)

OPERATING RESULTS.

This report shows that the Commission found that from January 1st, 1916, to May 31st, 1923, the operating results of the branch line were: Operating revenues, $88,588.04; operating expenses, $236,185.04; taxes, $157,244.35. Eliminating the item of taxes, the deficit in the net operating revenues was $147,597. It found that practically all of the operating expenses excepting superintendence are direct charges to the branch line. It found that the gross operating revenues on this branch had declined from $25,507.68 in 1916 to $5,813.91 in 1922, and $1,788.18 for the first five months of 1923. It found that the number of passengers carried on this branch line decreased from 3,711 in 1916 to 725 in 1922 and 185 in the first five months of 1923. It made a definite finding that the record does not contain any assurance that future operations would show a more favorable result. (Rec., 8.)

The foregoing figures show that for the first five months of 1923 the monthly average of passengers traveling on this branch line was only 37 persons, or a total of 185. With the operation of tri-weekly service in both

directions, and a consequent running of a total of 126 trains for the five months, the average number of passengers on each train during this period was only 1.46 persons. (Rec., 219-220.)

During the first five months of 1923 it was shown (Rec., 219-220) trains operated entirely without passengers as follows:

Month	No. of trains operated without any passengers.
January	5
February	8
March	11
April	8
May	10
Total trains operated without any passengers	42
Total trains operated	126

Passenger revenue for the first five months of 1923 was $175.23, indicating a declining tendency of passenger revenue, which was $828.75 in 1922, and $4,007 in 1916, with a steady decline each successive year except 1919 when the passenger revenue of $1,852.96 was $48.34 in excess of that of the preceding year. (Rec., 210.)

Freight revenue likewise declined. This revenue was shown for the first five months of 1923 as having been $845.52, while for 1922 it was $3,732.64, and in 1916 $20,-167.36, with a steady decline each successive year. Indeed, the mail revenue for these first five months in 1923 nearly equalled the freight revenue, being $685.15, against $845.52 for freight. (Rec., 210.)

The total tonnage during the same five months is shown to have declined to 357 tons. This included 20 cars of carload freight consisting of 3 cars of hay, 15 cars of ore, 1 car of ice, 1 car of logs and 66 tons of less-than-

carload merchandise, or an average of only 1,047 pounds of merchandise freight for each of the 126 trains operated. (Sheet 4, opposite Rec. 214.)

Thus the average train during this entire period of the first five months of 1923 had only 1.46 passengers and barely a half ton of less-than-carload merchandise freight. Every sixth train carried in addition one car of low-grade freight. To accomplish this transportation and that of the mail and to earn $82.28 of other revenue, the railway company incurred a railway operating deficit on the branch line of $25,629.62 including taxes, or an operating deficit of $13,613.61, excluding taxes. (Rec., 209, 210.)

Exhibit 1-A of the applicant introduced in evidence at the July 13, 1923, hearing (Rec., 209, 67), showed the following results of operation on the branch line in question:

	Operating Revenues:	Operating Expenses:	Operating Deficit:	Taxes:	Net Railway Operating Deficit:
1916.....	$25,507.68	$25,520.55	12.87	$14,230.59	$14,243.46
1917.....	17,830.53	25,185.04	7,354.41	17,903.30	25,257.81
1918.....	13,890.21	33,602.75	19,712.54	16,250.87	35,963.41
1919.....	9,983.38	33,846.32	23,862.94	20,017.97	43,880.91
1920.....	7,231.79	36,227.35	28,995.56	22,730.41	51,725.97
1921.....	6,542.36	35,746.96	29,204.60	25,256.78	54,461.38
1922.....	5,813.91	30,654.28	24,840.37	28,838.42	53,678.79
To June 1, 1923.....	1,788.18	15,401.79	13,613.61	12,016.01	25,629.62
Total	$88,588.04	$236,185.04	$147,597.00	$157,244.35	$304,841.35

The figures for 1923 are for the first five months and were the latest figures available at the time of the second hearing before the Commission. These figures show that the revenues of this branch line for the years 1916 to 1922 have averaged $12,399.98 while its operating expenses have averaged $31,540.46. There has been an average operating deficit of $19,140.48, the deficits being much greater in the later years than the average.

TAXES EXCEED GROSS REVENUES.

Taxes have averaged $20,746.90 and the net railway operating deficit has averaged $39,887.39. It is to be noted that since 1917 the taxes alone have greatly exceeded the gross revenues and that during this seven year and five months period this excess of taxes over gross revenues has amounted to $68,656.31. It is true that the Commission said that "the record does not show how much the applicant's taxes would be reduced through the proposed abandonment" (Rec., 8, 33) because although the figures shown were the actual taxes paid on this branch, the method in Colorado of assessing taxes is to ascertain the value of the whole system and distribute the taxes over the system to the various counties in proportion to the main track miles in the county "operated and non-operated." While no figures were available as to the actual tax valuation placed on this branch, in the distribution of the gross value of all of the railway's property there was allocated to this branch a valuation of $31,414 a mile. The valuation allocated to the branch line not being necessarily its actual value, if the actual value were proportionately less than the valuation of the main line, the taxes allocated to Chaffee County in which the branch lies would be on a basis in excess of the value of the branch line, but would tend to reduce taxes paid on applicant's other lines. This situation led the Commission to say:

> "This testimony leaves in doubt the question as to how much, if at all, applicant's tax payments would be reduced by the abandonment of this branch. However, when a part of a railway system like this branch fails to earn operating expenses, the taxing authorities in the public interest may well give consideration to the possibility of affording relief to the extent of their authority." (Rec., 33.)

WAGE COSTS EXCEED GROSS REVENUES.

Further comparisons between gross revenues and expenses may be helpful in showing that the Commission acted upon substantial evidence in certifying that the present and future public convenience and necessity permitted the abandonment of this branch from and after six months from the date of the certificate. (Rec., 11, 12.) In 1922 the gross freight revenue was $3,732.64 and the total revenue was $5,813.91 (Rec., 210) while enginemen's wages were $5,127.34, fuel for locomotives cost $2,638.47 and trainmen's wages were $4,389.02. In 1919 the gross revenues were barely sufficient to pay the wages of the enginemen and trainmen while in 1920 (Rec., 68-69), 1921 and 1922 (Rec., 210, 211) the wages of the enginemen and trainmen exceeded the gross revenues. In 1918 the gross revenues were slightly in excess of the expenses incurred in the maintenance of the roadbed (Rec. 68-69) while in 1919, 1920 (Rec., 68-69), 1921 and 1922 (Rec., 210, 211) the cost of maintaining the roadbed alone far exceeded the gross revenue. In 1920, 1921 and 1922 the actual "transportation expenses" incurred in operating this branch such as station service, train service including enginemen's wages, fuel, trainmen's wages and other train and transportation expenses, were more than twice the gross revenues. (Rec., 68, 69, 210 211.) A comparison of the total freight revenue for 1921 (Rec., 210) with the employees' wage figures for 1921 (Rec. 159) shows that the railway company paid out to its sectionmen nearly $2,000 more than it took in in freight revenues, while such freight revenue was not even sufficient to pay the enginemen's wages, and was only slightly in excess of the trainmen's wages.

These figures are illustrative of many similar figures in the record and speak for themselves as to the necessity for a railroad in the section reached by this narrow gauge line. They represent obviously a large economic loss to this railway company and a consequent burden upon interstate commerce. It is not surprising in view of this showing that both the majority and minority opinions of the Commission agreed that this branch line ought not longer to be operated. Thus, Commissioner Eastman in his dissent in which Commissioners Campbell and Cox concurred, said:

> "I agree that the conditions surrounding the line in question are such that public convenience and necessity do not require its continued operation." (Rec., 9.)

And again:

> "I believe that public convenience and necessity do not require the operation of the line in question." (Rec., 11.)

The basis of the dissent merely was that the losses shown did not constitute a sufficient burden upon interstate commerce to warrant the Commission in authorizing abandonment as to intrastate commerce, which was contrary to the finding of the majority.

Chronology of Proceedings Before Interstate Commerce Commission.

The proceeding before the Interstate Commerce Commission was under consideration by that body for 29 months before the final order authorizing abandonment was entered. Repeated hearings and arguments were had and that the case was fully considered by the Commission is shown by the following chronology of events:

September 1, 1921.	Application filed with Interstate Commerce Commission by Colorado & Southern Railway Company to abandon branch line in question. (Rec., 46.)
February 3-4, 1922.	Hearing before Examiner of Interstate Commerce Commission at Denver, Colorado. (Rec., 45-163.)
June 15, 1922.	Argument before Division 4, Interstate Commerce Commission, Washington, D. C.
July 28, 1922.	Report of Division 4, Interstate Commerce Commission, 72 I. C. C. 315, issued denying application with the statement, "If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application." (Rec., 16-20.)
May 19, 1923.	Petition filed by Colorado & Southern Railway Company to reopen the proceeding. (Rec., 163.)
June 14, 1923.	Order of Interstate Commerce Commission reopening proceeding and assigning same for further hearing. (Rec., 167.)
July 13-14, 1923.	Further hearing before Examiner of Interstate Commerce Commission at Denver, Colorado. (Rec., 167-233.)
September 24, 1923.	Report and order of Division 4, Interstate Commerce Commission, 82 I. C. C. 310, issued finding continued decline in traffic, that continued operation would burden interstate commerce, and authorizing abandonment of branch line together with issuance of a certificate therefor. (Rec., 21-23.)

November 12, 1923.	Order of Interstate Commerce Commission reopening proceeding for further argument before entire Commission on petition of State of Colorado and other protestants. (Rec., 243.)
December 1, 1923.	Reargument before Interstate Commerce Commission, Washington, D. C.
February 11, 1924.	Report and order of Interstate Commerce Commission on reargument affirming findings of Division 4 issued, 86 I. C. C. 393. This included an amended certificate of convenience and necessity authorizing abandonment of the branch line six months thereafter. (Rec., 244-249.)
August 7, 1924.	Order Interstate Commerce Commission amending certificate of convenience and necessity so as to make same effective from and after September 11, 1924.
August 19, 1924.	District Court of the United States for the District of Colorado (Lewis, Circuit Judge, and Symes and Phillips, District Judges), sitting at Denver, Colorado, dismissed bill of complaint of appellant herein alleging invalidity of order of Interstate Commerce Commission and denied application for injunction pending appeal. (Rec., 41, 42.)
September 11, 1924.	Order Interstate Commerce Commission further amending certificate of convenience and necessity so as to make same effective from and after October 11, 1924.
October 11, 1924.	Tariffs withdrawing freight rates and passenger fares on branch line become effective.

SUMMARY OF ARGUMENT.

Appellee railway company contends that the certificate and order of the Interstate Commerce Commission authorizing this abandonment were clearly within its statutory authority;[1] that this statutory authority to the Commission authorizing abandonment was part of a comprehensive scheme of railroad regulation wherein Congress sought to provide an adequate system of interstate transportation;[2] that the constitutionality of the Transportation Act, 1920, has been repeatedly upheld by this court;[3] that the courts will not review determinations of the Interstate Commerce Commission made within the scope of its power or substitute their judgment for its findings;[4] that the final order of the Interstate Commerce Commission was entered after full hear-

[1] Interstate Commerce Act, section 1, paragraphs 18 to 20 (41 Stat. at L., 477).

[2] Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co., 257 U. S. 563, at 585.
New England Divisions Case, 261 U. S. 184 at 189.
Dayton-Goose Creek Ry. Co. v. U. S., 263 U. S. 456 at 478.
Railroad Commission of Calif. v. Southern Pacific, 264 U. S. 331, at 347.
D. & M. Ry. Co. v. Boyne City G. & A. R. Co., (District Court, Eastern District of Michigan, Tuttle, J.) 286 Fed. 540, at 547-548.

[3] Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co., 257 U. S. 563.
New York v. United States, 257 U. S. 591.
State of Texas v. Eastern Texas R. Co., 258 U. S. 204.
State of Texas v. I. C. C., 258 U. S. 158, at 165.
Dayton-Goose Creek Ry. Co. v. U. S., 263 U. S. 456.
Railroad Com. of Calif. v. Southern Pacific Company, 264 U. S. 331.
Kansas City, Mexico & Orient Division Case, (U. S. v. Abilene & S. Ry. Co.) 265 U. S. 274, at 285.

[4] United States v. New River Company, 265 U. S. 533 at 542.
Illinois Central v. Interstate Commerce Commission, 215 U. S. 452 at 470.
Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541 at 547.
Kansas City Southern Railway Company v. U. S., 231 U. S. 423 at 456.
U. S. v. Louisville & Nashville Ry. Co., 235 U. S. 314 at 320.
Manufacturers Railway Company v. U. S., 246 U. S. 457 at 488.
Seaboard Air Line Railway Co. v. U. S., 254 U. S. 57 at 62.
New England Divisions Case, 261 U. S. 184, 203-204.

ing and argument, rehearing and reargument, upon consideration of the evidence of record;[5] that the Commission made an administrative finding of the existence of an undue burden upon interstate commerce through the operation of this branch, which finding was based upon substantial evidence;[6] that similar burdens have been frequently enjoined by the courts both prior and subsequent to the Transportation Act of 1920 as undue interference with interstate commerce.[7]

In answer to the contention of appellant that this case is ruled by the *Eastern Texas Case*, 258 U. S. 204, we reply that the Commission and the lower court correctly held that the facts in this case differentiate it from the Eastern Texas Case, appellee being an artery of interstate commerce in several states, the utility of which would be burdened by operation of this branch line.[8]

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[5] Abandonment of Branch Line by The Colorado and Southern Railway Co., 72 I. C. C. 315. Decided July 28, 1922, by Division 4 Interstate Commerce Commission. (Rec., 15.)

Abandonment of Branch Line by The Colorado and Southern Railway Co., 82 I. C. C. 310. Decided Sept. 24, 1923, by Division 4 on further hearing. (Rec., 21.)

Abandonment of Branch Line by The Colorado and Southern Railway Co., 86 I. C. C. 393. Decided February 11, 1924 by Commission on further argument. (Rec., 7.)

[6] Abandonment of Branch Line by The Colorado and Southern Railway Co., 86 I. C. C. 393 at 395. (Rec., 7-9.)

[7] C. B. & Q. R. R. Co. v. Railroad Comm. of Wis., 237 U. S. 220.

Mississippi Railroad Commission v. Illinois Central R. R. Co., 203 U. S. 335.

Atlantic Coast Line v. Wharton, 207 U. S. 328.

Herndon v. C. R. I. & P. Ry. Co., 218 U. S. 135.

Roach v. A. T. & S. F. Ry Co., 218 U. S. 159.

Railroad Commission of California v. Southern Pacific Company, 264 U. S. 331.

Davis, Director General v. Farmers Cooperative Company, 262 U. S. 312.

A. T. & S. F. Ry. Co. v. Wells, 265 U. S. 101.

[8] Abandonment of Branch Line by The Colorado and Southern Railway Co., 72 I. C. C. 315. Decided July 28, 1922, by Division 4, Interstate Commerce Commission.

Abandonment of Branch Line by The Colorado and Southern Railway Co., 82 I. C. C. 310. Decided Sept. 24, 1923, by Division 4 on further hearing.

Abandonment of Branch Line by The Colorado and Southern Railway Co., 86 I. C. C. 393. Decided February 11, 1924 by Commission on further argument.

The other points relied upon by appellant have already been ruled upon by this court adversely to appellant's contention; (a) contract or charter obligation of a carrier yields to the power of Congress to regulate interstate commerce and to administrative orders of the Interstate Commerce Commission entered thereunder;[9] (b) no duty rested on the Interstate Commerce Commission under the law to separate property values and revenue and expenses as between intrastate and interstate operations.[10]

We therefore contend that the decree of the lower court dismissing the bill should be affirmed.

[9] Louis. & Nash. Railroad Co. v. Mottley, 219 U. S. 467 at 482.
New York v. United States, 257 U. S. 591 at 600-601.
Philadelphia, B & W. R. Co. v. Schubert, 224 U. S. 603, 613.

[10] Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co., 257 U. S. 563 at 587.
Dayton-Goose Creek Railway Co. v. United States, 263 U. S. 456 at 485.

ARGUMENT.

I.

CERTIFICATE AND ORDER OF INTERSTATE COMMERCE COMMISSION WERE CLEARLY WITHIN ITS STATUTORY AUTHORITY.

For ready reference the provisions of the Interstate Commerce Act which prohibit any carrier subject to the Act, from abandoning "all or any portion of a line of railroad or the operation thereof" unless the Commission first issues a certificate that the present or future public convenience and necessity permit of such abandonment, are set forth in the appendix to this brief. These paragraphs provide among other things that

> "no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment." (Par. 18.) * * *
>
> "From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the * * * abandonment covered thereby". (Par. 20.)

The Amended Certificate of Public Convenience and Necessity issued February 11, 1924, omitting the caption and signature, reads as follows:

> "A further argument and investigation of the matters and things involved in this proceeding having been had, and the commission having, on the date hereof, made and filed a report containing its

findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity permit the abandonment by the Colorado & Southern Railway Company of the branch line of railroad in Chaffee County, Colo., described in the application and report aforesaid.

It is ordered, That the Colorado & Southern Railway Company when filing schedules canceling tariffs applicable on said branch line, shall in such schedules make specific reference to this certificate by title, date, and docket number.

It is further ordered, That this certificate shall take effect and be in force from and after six months from the date of its issue, and shall replace the certificate of public convenience and necessity issued September 24, 1923, in this proceeding." (Rec., 11-12.)

The statute authorizing abandonment expressly applies to "carriers by railroad subject to this Act" which are defined in Section 1 of the act to be "common carriers engaged in the transportation of passengers or property wholly by railroad * * * in interstate or foreign commerce."

There is and can be no contention that The Colorado and Southern Railway Company is not a common carrier subject to the Interstate Commerce Act. Indeed, the appellant does not question the validity of the Commission's certificate and order as to the abandonment of interstate and foreign commerce on the branch line involved in this application. The branch was clearly "all or" a "portion of a line of railroad."

Paragraph 3 of Section 1 of the Interstate Commerce Act provides:

> "The term "railroad' as used in this Act shall include * * * all the road in use by any common carrier operating a railroad, whether owned or

> operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property."

That this branch line was a railroad within this designation cannot be questioned. The Commission so held in each of its three reports. It is noteworthy that Commissioner Eastman, who dissented from the final report on the ground that the losses shown in operation did not constitute a sufficient burden upon interstate commerce to warrant the Commission in extending its authority of abandonment to intrastate operations, joined in the first report made by the Commission through Division 4, in which it said:

> "Prior to the hearing the State of Colorado, by its public utilities Commission, filed a motion to dismiss the proceeding on the ground that the applicant's railroad is located wholly within the State of Colorado and therefore we have no jurisdiction to authorize its abandonment, and a hearing was held thereon. This motion was renewed at the main hearing, and like motions were made on the behalf of certain of the intervening protestants. While the branch line lies entirely within the State of Colorado it constitutes a part of applicant's system, its operating results are reflected in the accounts of the applicant, and the latter would be required to bear or make good any deficits from its operation. We are therefore of opinion that we have jurisdiction." *Abandonment of Branch Line by The Colorado and Southern Railway Co.* 72 I. C. C. 315. (Rec., 16.)

This finding was repeated in the second report, *Abandonment of Branch Line by The Colorado and Southern Railway Co.* 82 I. C. C. 310 (Rec., 22), and in the third report, *Abandonment of Branch Line by The Colorado & Southern Railway Co.* 86 I. C. C. 393. (Rec., 9.)

II.

STATUTORY AUTHORITY TO COMMISSION TO AUTHORIZE ABANDONMENT WAS PART OF A COMPREHENSIVE SCHEME OF RAILROAD REGULATION WHEREIN CONGRESS SOUGHT TO PROVIDE AN ADEQUATE SYSTEM OF INTERSTATE TRANSPORTATION.

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.* 257 U. S. 563, at 585.

New England Divisions Case, 261 U. S. 184, at 189.

Dayton-Goose Creek Ry. Co. v. *U. S.* 263 U. S. 456, at 478.

Railroad Commission of Calif. v. *Southern Pacific,* 264 U. S. 331.

D. & M. Ry. Co. v. *Boyne City G. & A. R. Co.* (District Court, Eastern District of Michigan, Tuttle, J.), 286 Fed. 540, at 547-548.

In *Dayton-Goose Creek Ry. Co.* v. *U. S.* 263 U. S. 456, 478, in which the "recapture" provisions of the Act were involved, the court said:

> "* * * the Transportation Act adds a new and important object to previous interstate commerce legislation, which was designed primarily to prevent unreasonable or discriminatory rates against persons and localities. The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the

> Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, *their abandonment of old lines,* and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and, in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged." (Italics ours.)

See also *The New England Division Case,* 261 U. S. 184, note on page 190, wherein the power to "authorize abandonment of unprofitable and unnecessary lines" was referred to as prominent among the new provisions by which "the 1920 act sought to ensure * * * adequate transportation service".

In *Railroad Commission of California* v. *Southern Pacific Company* (The Los Angeles Union Depot Case), 264 U. S. 331, the court in discussing the authority conferred on the Commission by paragraphs 18 to 21 of Section 1 and other sections of the Interstate Commerce Act, spoke of "the purpose of Congress to prevent interstate carriers from incurring expenses which will lessen their ability to perform well their interstate functions". (p. 347.)

In *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R. Co.* 257 U. S. 563, which involved the power of the Interstate Commerce Commission to remove discrimination against interstate commerce by action of the state in establishing a lower level of intrastate fares, the court said:

> "Congress, in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traf-

> fic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress, as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. (Citing cases.) In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field." (pp. 589, 590.)

In *Texas* v. *Eastern Texas R. R. Co.* 258 U. S. 204, at 217, the power of the Interstate Commerce Commission to authorize abandonment by an interstate carrier of "a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce" was recognized.

To permit a state to require an interstate carrier to operate in intrastate commerce at a heavy loss a branch line not required by public convenience and necessity would establish a principle which would enable the state to nullify the efforts of Congress to provide an adequate national system of transportation since one of the obvious ways of accomplishing that end is to prevent needless waste by interstate carriers in all their operations. The state cannot be permitted thus to hamper and burden an artery of interstate commerce.

III.

THE CONSTITUTIONALITY OF THE TRANSPORTATION ACT, 1920, HAS BEEN UPHELD.

It is, of course, unnecessary to do more than cite some of the recent cases upholding the constitutionality of the Transportation Act. They are as follows:

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.* 257 U. S. 563.

New York v. *United States*, 257 U. S. 591.

State of Texas v. *Eastern Texas R. Co.* 258 U. S. 204.

Dayton-Goose Creek Ry. Co. v. *U. S.* 263 U. S. 456.

Railroad Com. of Calif. v. *Southern Pacific Company*, 264 U. S. 331.

U. S. v. *Abilene & S. Ry. Co.* 265 U. S. 274, at page 284.

IV.

COURTS WILL NOT REVIEW DETERMINATIONS OF THE INTERSTATE COMMERCE COMMISSION MADE WITHIN THE SCOPE OF ITS POWERS OR SUBSTITUTE THEIR JUDGMENT FOR ITS FINDINGS AND CONCLUSIONS.

This familiar rule is illustrated by many cases involving not only reasonableness and discriminatory nature of rates, but the various other administrative activities of the Commission. Some of these cases are:

U. S. v. *New River Co.* 265 U. S. 533, at 542, which was a suit to set aside an order of the Interstate Commerce Commission prescribing rules of car distribution.

I. C. C. v. *Illinois Central R. Co.* 215 U. S. 452, at page 470. (Suit to set aside order of Interstate Commerce Commission with respect to car distribution.)

Interstate Commerce Commission v. *Union Pacific Railroad Co.* 222 U. S. 541, at 547. (Suit to set aside order of Interstate Commerce Commission prescribing reasonable freight rates.)

Kansas City Southern Railway Company v. *U. S.* 231 U. S. 423, at 456. (Suit to set aside order of Interstate Commerce Commission prescribing accounting rules for carriers subject to its jurisdiction.)

United States v. *Louisville & Nashville Railway Company,* 235 U. S. 314, at 320. (Suit to set aside order of Interstate Commerce Commission with respect to rebilling of grain at Nashville, Tenn.)

Seaboard Air Line Railway Co. v. *U. S.* 254 U. S. 57, at 62. (Suit to set aside order of Interstate Commerce Commission in respect to switching charges at Richmond, Va.)

New England Divisions Case, 261 U. S. 184, 203-204. (Suit to enjoin order of Interstate Commerce Commission prescribing divisions of rates.) Here it was said, at page 204:

> "To consider the weight of the evidence, or the wisdom of the order entered, is beyond our province."

Manufacturers Railway Company v. *U. S.* 246 U. S. 457, at 488. (Suit to enjoin order of Interstate Commerce Commission prescribing rates and absorption at St. Louis, Mo.) In this case it was held:

> "Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the

Commission, (*Interstate Commerce Commission* v. *Alabama Midland Ry. Co.* 168 U. S. 144, 170) and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. (p. 481.) * * * The conclusions were reached after full hearing, are not without support in the evidence, and we are unable to say that they show an abuse of discretion. It may be conceded that the evidence would have warranted a different finding; indeed, the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this cannot be done." (p. 482.)

In the light of these decisions it is remarkable that counsel for appellant should argue in this court (Appellant's brief, p. 48) that the findings of fact by the minority of the Commission were right and should be substituted for the finding of the majority that "the large losses sustained in operating the branch line 'would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce,'" and "that the present and future public convenience and necessity permit the abandonment by the applicant of the branch line of railroad in question." (Rec., 9.) Not only is the court bound by the findings of fact by the Commission, but, of course, it looks for such findings to the majority and not to the minority opinion.

V.

FINAL ORDER OF THE INTERSTATE COMMERCE COMMISSION IN THIS CASE WAS ENTERED AFTER FULL HEARING AND ARGUMENT, REHEARING AND REARGUMENT, UPON CONSIDERATION OF THE EVIDENCE OF RECORD.

Abandonment of Branch Line by The Colorado and Southern Railway Co. 72 I. C. C. 315. Decided July 28, 1922, by Division 4 Interstate Commerce Commission. (Rec., 15.)

Abandonment of Branch Line by The Colorado and Southern Railway Co. 82 I. C. C. 310. Decided September 24, 1923, by Division 4 on further hearing. (Rec., 21.)

Abandonment of Branch Line by The Colorado and Southern Railway Co. 86 I. C. C. 393. Decided February 11, 1924, by Commission on further argument. (Rec., 7.)

Exhaustive consideration was given by the Commission to this matter extending over a period of 29 months as shown by the chronology of proceedings before the Commission set forth in the statement of the case. (*Ante*, page 13.) A review of that chronology and of the three reports made by the Commission will demonstrate the unusually exhaustive nature of the consideration which the Commission gave to these abandonment proceedings.

VI.

INTERSTATE COMMERCE COMMISSION HAS MADE ADMINISTRATIVE FINDING OF FACT OF EXISTENCE OF UNDUE BURDEN UPON INTERSTATE COMMERCE.

In its third and final report, among other things, the Commission said:

> "The protestants contend that paragraphs (18) to (21), inclusive, of Section 1 of the act, in so far as they may attempt to confer exclusive jurisdiction upon us to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado and engaged in its intrastate commerce, are unconstitutional. The case of *Texas* v. *Eastern Texas R. R. Co.* 258 U. S. 204, is relied upon to support such contention. In our opinion the conclusion therein reached does not apply to the facts in the present case. The applicant's lines are not located and doing business wholly within the State of Colorado. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation. It clearly appears that, in the language of the Supreme Court in the case above cited, the large losses sustained in operating the branch line 'would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.' We are of opinion that we have jurisdiction." 86 I. C. C. 393, at 395.

Among the numerous matters of record given consideration by the Commission in entering its order, as shown by its report, were the following:

> "From January 1, 1916, to May 31, 1923, the operating results of the branch line were: Operating revenues, $88,588.04; operating expenses, $236,185.04; taxes, $157,244.35. The record does not show how much the applicant's taxes would be reduced

through the proposed abandonment. Eliminating the item of taxes, the deficit in the net operating revenues was $147,597. Practically all of the operating expenses, excepting superintendence, are direct charges to the branch line. The operating revenues decreased from $25,507.68 in 1916 to $5,813.91 in 1922, and $1,788.18 for the first five months of 1923. The number of passengers carried decreased from 3,711 in 1916 to 725 in 1922, and 185 in the first five months of 1923. The record does not contain any assurance that future operations would show a more favorable result.

The applicant's net railway operating income for 1921 and 1922 was $1,903,793.39 and $1,061,877.35, respectively." 86 I. C. C. 393, at 394-395.

These findings were not arbitrary but were based upon an abundance of evidence in the record.

Appellant in its brief contends that past operating results on the line in question are not sufficient to support the order of the Commission. It is argued that the record does not disclose what it will cost to operate the line in intrastate commerce or what the demands of the State of Colorado will be with reference to specific service.

Obviously the future operations would best be judged by the past. The past operations were shown to have been continuously and progressively carried on at a loss from 1916 and the Commission has specifically found "the record does not contain any assurance that future operations would show a more favorable result". (Rec., 8.)

It is to be borne in mind that the Commission in its first order made July 28, 1922, denied the applicant carrier a certificate of convenience and necessity authorizing abandonment of this branch, but said:

"While the operation of the line for the past four or five years has resulted in substantial losses, the

record affords some assurance that the conditions which produced that result are changing and that future operations may show a more favorable return. * * *

If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable length of time, the applicant may renew its application. It is not in the public interest that even a strong line like the applicant should permanently operate parts of its system that do not yield revenues sufficient to pay operating expenses and interest on the net scrap value of the property. Persons directly interested in the continued operation of the line should co-operate to the fullest extent possible with the management of the road with the view of effecting more favorable operating results. The offer of the applicant to lease the line proposed to be abandoned to protestants for a rental of $5 per year should be given serious consideration by protestants." (Rec., 19, 20.)

May 19, 1923, applicant petitioned for the reopening and further hearing of the case, which petition was granted and a further hearing was held on July 13, 1923, and the matter was again briefed and argued before Division 4 of the Commission on September 4, 1923. On September 24, 1923, the Commission made its further report (Rec., 21), wherein it held:

"The record made at the further hearing clearly establishes that the improvement in operating results anticipated by the protestants at the first hearing has not materialized, and that the operation of the line since the original application was filed has resulted in a large deficit. For the year 1922 operating revenues were $5,813.91; operating expenses $30,654.28; and taxes, $28,838.42. For the first five months of 1923 operating revenues were $1,788.18; operating expenses, $15,401.79; and taxes, $12,016.01. The total tonnage transported in 1922 was 1,865 tons, and in the first five months of 1923, 357 tons. * * *

It is further contended by the protestants that the

proposed abandonment is not within the applicant's charter powers; and that paragraphs 18 to 21, inclusive, of section 1 of the Transportation Act are unconstitutional in so far as they may attempt to confer exclusive jurisdiction upon this Commission to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado.

The case of *Texas* v. *Eastern Texas R. R. Co.* 258 U. S. 204, is cited in support of the last proposition. In our opinion the conclusion therein reached does not apply to the facts in the present case. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation.

The case for the protestants rests largely upon optimistic predictions and hopes. The record shows that for many years the operation of this branch line has caused the applicant a large annual loss. No definite evidence is submitted upon which a conclusion could be based as to when, if ever, sufficient traffic could be developed to pay the costs of operation. At the further hearing the applicant renewed its offer to lease the line to the protestants at a rental of $5 a year, provided they would operate it in its present condition, or to sell it to them for its scrap value." (Rec., 22.)

A certificate authorizing the abandonment was thereupon issued dated September 24, 1923. (Rec., 23.) Thereafter the State of Colorado and other protestants filed petitions for a rehearing and the case was set for further argument before the full Commission on December 1, 1923. The final report was issued February 11, 1924 (Rec., 7), wherein the Commission again reviewed the evidence, affirmed the findings in its former report, found that in the interval between the two hearings traffic and revenues had shown a progressive decrease, that eliminating the item of taxes, a deficit in net operating revenues from January 1, 1916, to May 1, 1923,

was $147,597, and that during that period taxes on this branch line amounting to $157,244.35 had been paid. It further found that the operating revenues decreased from $25,507.68 in 1916 to $5,813.91 in 1922 and $1,788.18 for the first five months of 1923; that the number of passengers decreased from 3,711 in 1916 to 725 in 1922, and 185 in the first five months of 1923. It then specifically found "the record does not contain any assurance that future operations would show a more favorable result." (Rec., 8.)

It also found, distinguishing the Eastern Texas Case, that applicant's lines are not located and doing business wholly within the State of Colorado; that applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation. There was then an express finding that:

> "It clearly appears that, in the language of the Supreme Court in the case above cited (Eastern Texas Case) the large losses sustained in operating the branch lines 'would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.' "

Thereupon the Commission said:

> "Upon the facts presented we affirm the finding of our former report, 82 I. C. C. 310, and find that the present and future public convenience and necessity permit the abandonment by the applicant of the branch line in question." (Rec., 9.)

It thus appears that the Commision not only gave detailed consideration to a large amount of evidence about past operations but also took into consideration all evidence offered with regard to the possibility of development of traffic upon this branch in the future. In addition to that, it had before it the operations during what might be termed a test period, made possible by the lapse

of time between February 3, 1922, and July 13, 1923, the dates of the first and second hearings, and found from the evidence offered at the second hearing that "it clearly appeared that the improvement in operating results anticipated by the protestants at the first hearing had not materialized, and that, in the interval between the two hearings, the traffic and revenue had shown a continued and progressive decrease." (Rec., 7.)

The protestants therefore had through this test period an opportunity to show what possibilities there were of further development of traffic and the record showed and the Commission found that they signally failed to make good on their confident predictions at the first hearing that developments in progress in the mines would result in substantial traffic increase within a short time.

The Commission said in its third report:

> "While the record, as then made, (at the first hearing) disclosed that the line had been operated at a large loss for several years, the testimony of the protestants was to the effect that developments in progress would result in a substantial traffic increase within a short time"; that at the second hearing, "it clearly appeared that the improvements in operation results anticipated by the protestants at the first hearing had not materialized, and that, in the interval between the two hearings, the traffic and revenue had shown a continued and progressive decrease." (Rec., 7.)

This finding was abundantly supported by the evidence. Thus it appeared that during the year 1922 the only mines shipping any ore were the Mary Murphy mine (Geo. E. Collins, trustee) which shipped 58 cars, and the Rarius-Warrior mine which shipped 4 cars. The gross revenue to the C. & S. from these 62 cars was $1,938.29. (Sheet 3, Ex. 6a, Rec., 214.) In the first five months of 1923, the Mary Murphy mine shipped 15 cars paying the

C. & S. a gross revenue of $294.85. (Sheet 4, Ex. 6a, Rec., 214.)

The manager of the Rarius-Warrior mine had predicted at the first hearing that he would ship one car of ore per day after May 1, 1922. (Rec., 134.) The mine actually shipped four cars in over one year, the first being shipped in August, 1922. (Sheets 1 and 2, Ex. 6a, (Rec., 214.)

Despite "optimistic predictions and hopes" (Rec., 22) at the first hearing as to future tonnage (Rec., 17, 20) not another mine shipped a single car of ore between the two hearings. (Sheets 3 and 4, Ex. 6a, Rec., 214.)

Surely these facts justified the finding of the Commission at the second hearing that "it was clearly established that the improvements in operating results anticipated by the protestants at the first hearing had not materialized, and that the operation of the line since the original application was filed has resulted in a large deficit" (Rec., 22), which finding was affirmed in the final report. (Rec., 7, 9.) Thus, it was demonstrated that protestants were seeking to compel the railway company "to maintain a railroad for the benefit of others who do not care to pay for it." (*Brooks-Scanlon Co.* v. *R. R. Commission*, 251 U. S. 396, 399.)

Counsel suggest that it is not shown what specific service the State of Colorado would demand in the future and for aught that appears "it may be that one train per week will be adequate. If so, how much will it cost to operate that train and what will the revenue be? Will the net result be a profit or a loss? The record fails to disclose an answer." (Appellant's brief, page 42.) "This is merely the language of hope." (*Brooks-Scanlon Co.* v. *R. R. Com. of La. supra.*) It was singularly within the province of protestants to indicate

what future service they would regard as sufficient and this they failed to do. The case was tried upon the evident theory that the existing tri-weekly service was the minimum that would be demanded and no suggestion was ever made that less than tri-weekly service would suffice. A public convenience and necessity that could be satisfied with less than tri-weekly service would obviously not be a very pressing public necessity.

The record conclusively shows that the wages of the conductor and brakemen on this line had to be paid for on the basis of 6 days' service each week, and of the engineer and fireman, for 7 days' service each week; that the railway company was compelled to pay these wages in order to get men to operate the trains, and that any reduction in the number of trips a week would not reduce these items of expense. (Rec., 91, 96.) Maintenance of roadbed would also be a continuing expense of operation little affected by reduction in train service. This expense for several years had far exceeded the gross revenue. (Rec., 68-69, 210, 211.)

In this connection it is interesting to recall, as heretofore shown in this brief, that in recent years on this branch the wages of the engine men and train men exceeded the total gross revenues. It is evident that no possible reduction in service could possibly result in this road earning revenues that would even approach the direct out-of-pocket expense of operation, and the Commission was completely justified in holding that the record does not contain "any assurance that future operations would show a more favorable result" than the enormous deficits which had been continuously piled up from 1916. (Rec., 8.)

Counsel argue at length about the "duty of a railway company to furnish adequate facilities," but that

duty implies there is substantial tonnage traffic to be transported and a public convenience and necessity to be met. These conditions precedent to the carrier's duty to furnish facilities were found by the Commission to be wholly lacking here.

VII.

SIMILAR BURDENS HAVE BEEN FREQUENTLY ENJOINED BY THE COURTS BOTH PRIOR AND SUBSEQUENT TO THE TRANSPORTATION ACT OF 1920 AS UNDUE INTERFERENCE WITH INTERSTATE COMMERCE.

Railroad Comm. of Wis. v. *C. B. & Q. R. R. Co.* 237 U. S. 220. (Here the running of two additional intrastate passenger trains involving an annual expense of $84,000 to a railroad with approximately 10,000 miles of operated mileage was found to constitute undue interference with interstate commerce.)

See also:

Mississippi Railroad Commission v. *Illinois Central R. R. Co.* 203 U. S. 335.
Atlantic Coast Line v. *Wharton,* 207 U. S. 328.
Herndon v. *C. R. I. & P. Ry. Co.* 218 U. S. 135.
Roach v. *A. T. & S. F. Ry. Co.* 218 U. S. 159.

Since the enactment of the Transportation Act, 1920, burdens upon interstate commerce have likewise been enjoined:

Railroad Commission of California v. *Southern Pacific Company,* 264 U. S. 331. (Here an order of the California Commission, requiring three railroads to construct a union station in Los Angeles was enjoined. These railroads had a total operated mileage of 23,281 miles and

the new station would have required a minimum capital expenditure of $25,000,000, or a capital expenditure of approximately $1,000 a mile. The Supreme Court held that such a capital charge might be an undue burden upon interstate commerce, and that it was for the Interstate Commerce Commission to determine whether or not such would be the case.)

In the present case the annual net railway operating deficit on this branch line, of approximately $55,000, if capitalized at 5¾ per cent, (the fair rate of return on the value of carriers' property in groups prescribed by the Interstate Commerce Commission, pursuant to Section 15a Interstate Commerce Act) amounts to a capital sum of $956,500. This is a capital charge of approximately $956 per mile of operated line. Even if all of the taxes on this line were entirely eliminated from consideration, the remaining annual loss of approximately $30,000 a year on this branch represents, on a similar basis of computation, a capital sum of $521,700, or $474 per mile for the total operated mileage of the entire Colorado & Southern system.

See also *Davis, Director General* v. *Farmers Co-operative Company*, 262 U. S. 312. (Here a Minnesota statute permitting prosecution of suits in Minnesota against railroad companies for causes of action arising in other states, was held to be an undue burden and an unreasonable interference with interstate commerce.)

At page 317, the court said:

> "The public and the carriers are alike interested in maintaining adequate, uninterrupted transportation service at reasonable cost. This common interest is emphasized by the Transportation Act, 1920, which authorizes rate increases necessary to insure carriers efficiently operated a fair return on property devoted to the public use. See *Railroad*

Com. of Wisconsin, v. *C. B. & Q. R. R. Co.* 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184. Avoidance of waste, in interstate transportation, as well as maintenance of service, has become a direct concern of the public. With these ends the Minnesota statute, as here applied, unduly interferes. By requiring from interstate carriers general submission to suit it unreasonably obstructs, and unduly burdens, interstate commerce."

A. T. & S. F. Ry. Co. v. *Wells*, 265 U. S. 101, decided May 12, 1924. (Here a garnishment statute of the State of Texas permitting the impounding of funds of foreign railroad corporations not doing business in that state, was held to be void as an unreasonable interference with and an undue burden on interstate commerce. The garnishment here was for the sum of $4,000 and the seizure of this credit as against the Santa Fe was held to be an unwarranted interference with interstate commerce.)

VIII.

THE COMMISSION AND THE DISTRICT COURT CORRECTLY HELD THAT THE FACTS IN THIS CASE DIFFERENTIATED IT FROM THE EASTERN TEXAS CASE, 258 U. S. 204.

Counsel for appellant argue that this case is ruled by the *Eastern Texas case*, 258 U. S. 204. They made the same contention unsuccessfully before the Interstate Commerce Commission and the District Court. It appears that the Commission in each of the three reports made by it gave full consideration to this contention and overruled it.

In the first report it said:

"Prior to the hearing the State of Colorado, by its public utilities commission, filed a motion to dismiss the proceeding on the ground that the applicant's

railroad is located wholly within the State of Colorado and therefore we have no jurisdiction to authorize its abandonment, and a hearing was held thereon. This motion was renewed at the main hearing, and like motions were made on behalf of certain of the intervening protestants. While the branch line lies entirely within the State of Colorado, it constitutes a part of applicant's system, its operating results are reflected in the accounts of the applicant, and the latter would be required to bear or make good any deficits from its operation. We are therefore of opinion that we have jurisdiction." (Rec., 16.)

In the second report it was said:

"It is further contended by the protestants that the proposed abandonment is not within the applicant's charter powers; and that paragraphs 18 to 21 inclusive of section 1 of the Transportation Act are unconstitutional in so far as they may attempt to confer exclusive jurisdiction upon this Commission to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado.

The case of *Texas* v. *Eastern Texas R. Co. et al.* 258 U. S. 204 is cited in support of the last proposition. In our opinion the conclusion therein reached does not apply to the facts in the present case. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation." (Rec., 22.)

In the third report the Commission said:

"The protestants contend that paragraphs (18) and (21), inclusive, of section 1 of the act, in so far as they may attempt to confer exclusive jurisdiction upon us to permit the abandonment of lines of railroad located and doing business wholly within the State of Colorado and engaged in its intrastate commerce, are constitutional. The case of *Texas* v. *Eastern Texas R. R. Co. et al.* 258 U. S. 204, is relied upon to support such contention. In our opinion the conclusion therein reached does not apply to the facts in the present case. The applicant's lines are

not located and doing business wholly within the State of Colorado. The applicant is an interstate carrier, the operating results of the branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation. It clearly appears that, in the language of the Supreme Court in the case above cited, the large losses sustained in operating the branch line 'would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.' We are of opinion that we have jurisdiction." (Rec., 9.)

That the Commission and lower court correctly ruled that the Eastern Texas case did not govern this case is clear. The two cases are easily distinguished. In the Eastern Texas case abandonment of the entire line was sought and that line lay wholly within the state. In this case partial abandonment only was authorized, namely: of a branch line which was part of a larger system. While the line to be abandoned lay wholly within the state it was part of an interstate system extending into other states than Colorado, that is, Wyoming and New Mexico.

Again, in the Eastern Texas case all agreed that the certificate permitted abandonment as to interstate operations whereupon the carrier ceased to be an interstate carrier and therefore no longer subject to the Interstate Commerce Act. In this case after abandonment of interstate operations on this branch the railway company would still be an interstate carrier subject to the Interstate Commerce Act.

Again, as the court properly said in the Eastern Texas case after abandonment of interstate operations continued operation in intrastate commerce would be a matter only of local concern because carried on by a purely intrastate carrier. In this case continued operation of the branch in intrastate commerce would be by an inter-

state carrier and therefore of national or interstate concern because the deficits on this branch line would be reflected in the earnings of the interstate carrier and would as found by the Commision burden interstate commerce.

Again, paragraph 22 of Section 1 of the Interstate Commerce Act provides that the only lines of an interstate carrier wholly within a state that are excluded from the operation of the abandonment provisions of the act are spur, industrial, team, switching or sidetracks, none of which designations covers the branch line in question. In the Eastern Texas case since the entire line sought to be abandoned lay within the state, upon abandonment of its interstate operations which was authorized it would cease to be an interstate carrier subject to the act at all.

IX.

A CONTRACT OR CHARTER OBLIGATION OF A CARRIER CORPORATION YIELDS TO THE POWER OF CONGRESS TO REGULATE INTERSTATE COMMERCE AND TO ADMINISTRATIVE ORDERS OF THE INTERSTATE COMMERCE COMMISSION ENTERED THEREUNDER.

As ground for the alleged invalidity of the Commission's order appellant contends that the railway company had an obligation under its charter from the State of Colorado to continue to operate the branch line, which charter obligation bound the hands of the Interstate Commerce Commission. This is characterized by counsel as "the main contention made by the State of Colorado in the proceedings before the Commission." (Appellant's brief, page 45.)

That a contract or charter obligation of a carrier corporation yields to the power of Congress to regulate interstate commerce and to administrative orders of the Interstate Commerce Commission entered thereunder has been held by this court in many cases. Among them are:

Louisville & Nashville R. Co. v. *Mottley*, 219 U. S. 467, at 482.

Philadelphia, B. & W. R. Co. v. *Schubert*, 224 U. S. 603, 613.

New York v. *U. S.* 257 U. S. 591, 600, 601.

In the last cited case an order of the Interstate Commerce Commission requiring the raising of intrastate passenger fares to 3.6 cents per mile in New York, to remove discrimination against interstate commerce, was upheld against attack by the State of New York, even though the New York Central Railroad Company had a charter obligation not to increase its fares to more than 2 cents a mile. At pages 600-601 this court said:

> "The next objection is that the state has a charter contract with the New York Central Railroad Company by which the latter is bound not to charge more than two cents a mile for passenger carriage between Albany and Buffalo, and that, if the Transporation Act permits the Interstate Commerce Commission by such an order to enable the railroad company to violate its contract, it impairs the obligation of a contract in violation of Section 10, Article I, of the Federal Constitution. That section provides that 'no State shall * * * pass a law * * * impairing the obligation of contracts,' and does not in terms restrict Congress or the United States. But it is said that it deprives New York and her people of property without due process of law. We said in *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 230, 'Anything which directly obstructs and thus regulates that commerce which is carried on among the states, whether it is

state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce.' *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467. See, also, *Scranton* v. *Wheeler*, 179 U. S. 141, 162, 163; *Union Bridge Co.* v. *United States*, 204 U. S. 364, 400." (257 U. S. 591, at 600-601.)

See also *United States* v. *Village of Hubbard*, 266 U. S. 474, involving the validity of an order of the Interstate Commerce Commission requiring an interurban electric road to raise intrastate passenger fares which the Commission found subjected interstate commerce to unjust discrimination. In footnote 1, page 477, the court said:

"It was also contended that because the intrastate fares had been fixed by contract between the municipalities and the carriers (*Interurban Railway & Terminal Co.* v. *Public Utilities Commission*, 98 Oh. St. 287), Congress was without power to authorize an increase of the fares. The unsoundness of this contention was settled in *New York* v. *United States*, 257 U. S. 591."

The principle underlying these cases is obvious, namely, that the power of Congress to regulate commerce cannot be restricted by contracts between individuals or corporations, or by either of them with the state. As said in the *Mottley case, supra:*

"If that principle be not sound, the result would be that individuals and corporations could, by contracts between themselves, in anticipation of legislation, render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of its power to regulate commerce. No power of Congress can be thus restricted. The mischiefs that would result from a different interpretation of the Constitution will be readily perceived." (219 U. S. 467, at 485, 486.)

X.

NO DUTY RESTED ON THE COMMISSION TO SEPARATE PROPERTY VALUES AND THE REVENUES AND EXPENSES OF THE RAILWAY COMPANY AS BETWEEN INTRASTATE AND INTERSTATE OPERATIONS.

Counsel for appellant contend that the order of the Interstate Commerce Commission was invalid because it had failed to separate the property values and the revenues and expenses of the railway company as between intrastate and interstate operations. This proposition has been ruled against appellant in the following cases:

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.* 257 U. S. 563, at 587.

Dayton Goose Creek Railway Co. v. *United States*, 263 U. S. 456, at 485.

In the two cases last above cited the same objection now urged by the appellant to the Commission's order was made in respect to the orders there under review. In the first cited case the order of the Interstate Commerce Commission required the raising of intrastate passenger fares within the State of Wisconsin, over the protest of the state, to remove unjust discrimination against interstate commerce. The Supreme Court there disposed of the contention as follows:

> "Counsel for appellants are driven by the logic of their position to maintain that the valuation required for the purposes of Section 15a to be ascertained pursuant to Section 19a of the Interstate Commerce Act (37 Stat. L. 701; amended 41 Stat. L. 493), is to be only of that part of the property and equipment of the interstate carriers which is used in commerce among the States and must be segregated from that used in intrastate commerce. This

is contrary to the construction which since the enactment of Section 19a, March 1, 1913, the Commission has put upon that section in carrying out its injunction. It is inadmissible. The language of Section 15a refutes such interpretation. The percentage is to be calculated on 'the aggregate value of the railway property of such carriers held for and used in the service of transportation.' *To impose on the Commission the duty of separating property used in the two services when so much of it is used in both, and to do this in a reasonably short time for practical use, as contemplated by the statute, would be to assign it a well-nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it. They certainly do not.*" (Italics ours.)

Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.* 257 U. S. 563, at 587-588.

In the second cited case the order of the Commission related to the reporting by the carrier of net railway operating income in excess of 6 per cent of the value of the railway property under the so-called "Recapture" provisions of Section 15a of the Interstate Commerce Act. On the point that the failure to separate revenues and expenses as between intrastate and interstate operations, the court said:

"The third question for our consideration is whether the recapture clause, by reducing the net income from intrastate rates, invades the reserved power of the states and is in conflict with the Tenth Amendment. In solving the problem of maintaining efficiency of an interstate commerce railway system which serves both the States and the Nation, Congress is dealing with a unit in which state and interstate operations are often inextricably commingled. When the adequate maintenance of interstate commerce involves and makes necessary on this account the incidental and partial control of intrastate commerce, the power of Congress to exercise such control has been clearly established. (Cases cited.)

> The combination of uniform rates with the recapture clauses is necessary to the better development of the country's interstate transportation system as Congress has planned it. The control of the excess profit due to the level of the whole body of rates is the heart of the plan. *To divide that excess and attempt to distribute one part to interstate traffic and the other to intrastate traffic would be impracticable and defeat the plan.* This renders indispensable the incidental control by Congress of that part of the excess possibly due to intrastate rates which if present is indistinguishable." (Italics ours.)
>
> *Dayton Goose Creek Railway Co.* v. *United States*, 263 U. S. 456, at 485.

In the present case the Commission had evidence of the net railway operating income of the railway company since January 1, 1916. (Rec., 19, 9, 157.) For the year 1922 this was $1,061,877.35 (86 I. C. C. 393, at 395; Rec., 9, 231.)[1] Contrasted was a net railway operating deficit on this branch of $53,678.79 for 1922. (Exhibit 1A, Rec., 209.) The deficit from the branch thus constituted more than 5 per cent of the total net railway operating income of the entire system, or if taxes be disregarded and it be assumed as stated by the minority (Rec., 11) that total abandonment of the branch would not save applicant more than $30,000 a year as a maximum, the deficit would constitute nearly 3 per cent of the total net railway operating income of the entire system.

It is clearly competent for the Interstate Commerce

[1] In this connection it should be noted that counsel for appellant have twice erroneously stated this item. At page 11 of their brief they show the figure to be $1,468,057.78, and at page 35 of their brief they state it to be "almost $1,500,000." The figure taken by counsel from the record, page 229, was "railway operating income" and not "net railway operating income" which allows for debits and credits for hire of equipment and joint facilities rents, and is shown at record p. 231 to be $1,061,877.35.

Commission as a matter of administrative discretion to find that such a diminution of revenue of an interstate carrier casts a burden upon it which should be removed. No separation of revenue and expense as between state and interstate commerce would have added to or subtracted from such conclusion.

The impracticability and lack of necessity of apportioning aggregate values and revenue statistics of railway systems as between the Western Rate group and the Mountain-Pacific groups, which were given different rates, was commented on by the Interstate Commerce Commission in *Increased Rates*, 1920, 58 I. C. C. 220, 229, and in *Rates and Charges on Grain and Grain Products*, 91 I. C. C. 105, 113. Much greater would be the difficulty of making an apportionment as between state and interstate operations of individual systems and such requirement, in the language of the court above quoted, "would be impracticable and defeat the plan."

Where prior to the Transportation Act, 1920, the courts enjoined state requirements as burdens on interstate commerce they never found it necessary to separate carrier statistics as between intrastate and interstate operations.

Mississippi Railroad Commission v. *Illinois Central R. R. Co.* 203 U. S. 335.
Atlantic Coast Line v. *Wharton*, 207 U. S. 328.
Herndon v. *C. R. I. & P. Ry. Co.* 218 U. S. 135.
Roach v. *A. T. & S. F. Ry. Co.* 218 U. S. 159.
Railroad Commission of Wisconsin v. *C. B. & Q. R. R. Co.* 237 U. S. 221.

Nor in similar cases subsequent to the Transportation Act, 1920, has the court found it necessary to separate

such statistics as between intrastate and interstate operations.

Railroad Commission of California v. *Southern Pacific Co.* 264 U. S. 331.

Davis, Director General, v. *Farmers Co-Operative Equity Co.* 262 U. S. 312.

A. T. & S. F. Ry. Co. v. *Wells,* 265 U. S. 101.

XI.

IN ABANDONMENT CASES PUBLIC CONVENIENCE AND NECESSITY AND BURDEN UPON INTERSTATE COMMERCE BY CONTINUED OPERATION OF PARTICULAR LINES ARE THE TESTS UNDER THE LAW—NOT ADEQUACY OF EARNINGS FROM WHOLE PROPERTY.

Counsel argue that the order is invalid because the railway company did not show that it was earning a fair return on its property as a whole. Therefore, it is said, there could be no undue burden upon interstate commerce.[1] Earnings of a carrier upon its whole property are not, however, a test under the statute or a condition precedent to exercise by the Commission of its jurisdiction over abandonment applications. The very fact that a particular line is being operated at a loss, and that the whole system shows fair earnings, demonstrates that other portions of the system, and those who pay charges for transportation, are being burdened. Aside from this, under the group system of rate making, the earnings of a particular carrier, even though excessive, are of secondary importance. Recapture is provided in such

[1] It was shown that for years applicant had fallen far short of earning 6 per cent on its investment in road and equipment. (R. 157, 226, 231.)

cases. The operation of wasteful service and maintenance of unremunerative branch lines, is, however, a vital consideration under the group system. Section 15a of the Interstate Commerce Act, specifically enjoins upon the carriers "honest, efficient and economical management" as a condition precedent to the fixation by the Commission of general rate levels. Losses from unremunerative operations not only tend to require a higher general level of rates for the group, but likewise reduce the earnings of a particular carrier which might otherwise be subject to recapture.[2] In other words, the continued existence of such burdens is at variance with the whole underlying purpose of the act. The duty of the Commission is to foster and protect the national system, and unnecessary operation of branch lines, like this one, resulting in wasteful expenditures, is in conflict with the general plan.

Conclusion.

The certificate and order of the Interstate Commerce Commission were within the scope of its statutory authority, were based upon substantial evidence and were made after full argument and consideration of the record. The operating deficit on this branch in seven years and five months was over $147,000 and the net railway operating deficit (including taxes) was over $304,000. The findings of a burden upon interstate commerce from operation of the branch and that present and future public convenience and necessity permitted the abandonment of the branch, in both intrastate and interstate commerce, were findings of fact and were therefore not reviewable

[2] "The recapture clauses are * * * the key provision of the whole plan." *Dayton-Goose Creek R. Co. v. U. S.* 263 U. S. 456, 480.

by a court, and the decree of the lower court dismissing the bill should be affirmed.

Respectfully submitted,

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APPENDIX.

Paragraphs 18 to 20, inclusive, and paragraph 22 of Section One of the Interstate Commerce Act (41 Stat. L. 477):

"(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act * * * shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity * * * permit of such abandonment.

(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each state in which * * * all or any portion of a line of railroad or the operation thereof, is proposed to be abandoned with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operated.

(20) The Commission shall have the power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate and not before, the carrier by railroad may,

without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the * * * abandonment covered thereby."

"(22) The authority of the Commission, conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

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No. 195

In the Supreme Court of the United States

OCTOBER TERM, 1925

THE STATE OF COLORADO, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND THE COLORADO AND SOUTHERN RAILWAY COMPANY, APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

BRIEF FOR INTERSTATE COMMERCE COMMISSION

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For Interstate Commerce Commission.

P. J. FARRELL,
Of Counsel.

JANUARY, 1926.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 195

THE STATE OF COLORADO, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and The Colorado and Southern Railway Company, appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

BRIEF FOR INTERSTATE COMMERCE COMMISSION

OPINION OF THE COURT BELOW

There was no written or reported opinion of the court below.

STATEMENT OF THE CASE

This is an appeal under the act of October 22, 1913 (38 Stat. L. 208, 220), from a final decree of the United States District Court for the District of Colorado, consisting of Circuit Judge Lewis and District Judges Symes and Phillips, dismissing a petition by the State of Colorado, appellant herein, to enjoin and set aside a certificate and order of the

Interstate Commerce Commission authorizing the Colorado and Southern Railway Company to abandon a line of railroad located in Chaffee County, Colo. Appellant in its petition seeks to have the order set aside only in so far as it applies to intrastate business on this line. (R. 6.)

The Colorado and Southern Railway Company, a corporation under the laws of the State of Colorado (R. 249), operates in interstate and foreign commerce various lines located in that State and extending beyond into Wyoming and New Mexico. (See map, Ex. 15, following R. 160.) Among the lines which it thus operates is the one the abandonment of which as to intrastate commerce is sought to be enjoined in this suit. This line extends in a southerly and westerly direction from Buena Vista, Colo., where it connects with the Denver & Rio Grande Railroad, to Romley, Colo., and includes certain trackage extending westerly from Romley to Hancock, Colo., a total distance of 29.42 miles. (See map opposite R. 60, and map, Ex. 14, following R. 160.) The line is described by the Commission as follows (R. 16 and 17):

> The branch line in question extends from Buena Vista in a southerly and westerly direction to Romley and includes certain trackage extending westerly from Romley to the Flora Bell Mine and Hancock, a total distance of 29.42 miles. It has no connection with any of applicant's other operated lines. Its eastern terminus at Buena Vista is ap-

proximately 29 miles southwest of Garos, Park County, Colo., through which point applicant's nearest operated line of railroad extends. This branch comprises a segment of a narrow-gauge line of railroad which was constructed during the years 1874 to 1882 from Denver, across the Continental Divide by means of the Alpine Tunnel, to Gunnison and the Gunnison County coal fields. This railroad was continuously operated until 1910. At that time the line between Garos and Macune, a distance of 28.84 miles, and between Hancock and Quartz, a distance of 13.57 miles, including the Alpine Tunnel, was abandoned, and operation thereover has never been resumed. A large part of the abandoned track has been washed out and destroyed. Operation of that portion of the line from Quartz to its western terminus was taken over by the Denver & Rio Grande Railroad Company and has since been and is now being operated as a part of that company's system, with the exception of that portion thereof which parallels the Denver & Rio Grande Railroad between Parlin and Gunnison, a distance of 11.64 miles, which portion has also been abandoned and parts thereof destroyed. The applicant acquired ownership of the line in 1898. It has continued to operate the branch in question from Buena Vista to Romley for the purpose of furnishing transportation facilities for certain communities, mining camps, and mines located in the mountains west of

> Buena Vista and east of the Continental Divide. The track is laid with 40-pound to 56-pound rail and the maximum grade is 4 per cent. The present service consists of a mixed train which makes the round trip three days a week. The equipment consists of one locomotive, one combination baggage car and passenger coach, and a few box, coal, and flat cars.

As to the territory served by the line, the Commission said (R. 17).

> The territory traversed by the branch is described as extremely rugged and mountainous. The principal industry is mining, but there has been a small agricultural and lumbering development. The only town of importance served by the branch is Buena Vista, with a population of 903. This town is also served by the Denver & Rio Grande Railroad. There are several small communities along the line which are not served by any other railroads. The distances from these points to another railroad range from 5.4 miles to 21.29 miles. The population of the tributary territory, including the population of Buena Vista, is estimated by the applicant at 993.

PROCEEDINGS BEFORE THE COMMISSION

The certificate and order here under consideration were entered in a proceeding instituted by an application filed by the Colorado and Southern with the Commission on September 1, 1921, for a certificate of public convenience and necessity

pursuant to section 1 (18) of the interstate commerce act (24 Stat. L. 379, 41 Stat. L. 477) authorizing it to abandon its Buena Vista-Romley line. Protests against the proposed abandonment were filed by the towns of St. Elmo and Buena Vista, by the Flora Belle Mining Company and the Mary Murphy Gold Mining Company, and by the Board of County Commissioners of Chaffee County. Appellant filed a motion to dismiss the proceeding and objected to the Commission's jurisdiction to authorize the proposed abandonment as to intrastate traffic.

Hearings were held in this proceeding in the manner prescribed by law and the Commission made three reports therein, 72 I. C. C. 315 (R. 15), 82 I. C. C. 310 (R. 21), and 86 I. C. C. 393 (R. 244). In its *first* report, dated July 28, 1922, the Commission, by Division 4, found:

> Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the branch line of railroad in question. If the improvement in operating results, confidently anticipated by protestants, should not materialize within a reasonable period of time, the applicant may renew its application. It is not in the public interest that even a strong line like the applicant should permanently operate parts of its system that do not yield revenues sufficient to pay operating expenses and interest on the net scrap value of the property. Per-

> sons directly interested in the continued operation of the line should cooperate to the fullest extent possible with the management of the road with the view of effecting more favorable operating results. The offer of the applicant to lease the line proposed to be abandoned to protestants at a rental of $5 per year should be given serious consideration by protestants.
>
> An order will be entered denying the application. (R. 20.)

On May 19, 1923, the Commission upon petition of the Colorado and Southern reopened the case and held further hearings on July 13 and 14, 1923 (R. 167), about a year following its original report. Soon afterward the Commission, by Division 4, issued its *second* report, dated September 24, 1923, in which it said, among other things:

> The case for the protestants rests largely upon optimistic predictions and hopes. The record shows that for many years the operation of this branch line has caused the applicant a large annual loss. No definite evidence is submitted upon which a conclusion could be based as to when, if ever, sufficient traffic could be developed to pay the costs of operation. At the further hearing the applicant renewed its offer to lease the line to the protestants at a rental of $5 a year, provided they would operate it in its present condition, or to sell it to them for its scrap value.
>
> Upon the facts presented we find that the present and future public convenience and

necessity permit the abandonment of the branch line of railroad in question. A certificate to that effect will be issued. (R. 22 and 23.)

Thereafter upon petitions of protestants (R. 234, 238) the Commission reopened the proceeding and permitted the case to be reargued. Soon afterward, on February 11, 1924, it issued its *third* and final report in which it said, among other things:

> From January 1, 1916, to May 31, 1923, the operating results of the branch line were: Operating revenues $88,588.04; operating expenses, $236,185.04; taxes, $157,244.35. The record does not show how much the applicant's taxes would be reduced through the proposed abandonment. Eliminating the item of taxes, the deficit in net operating revenues was $147,597. Practically all of the operating expenses, excepting superintendence, are direct charges to the branch line. The operating revenues decreased from $25,507.68 in 1916 to $5,813.91 in 1922, and $1,788.18 for the first five months of 1923. The number of passengers carried decreased from 3,711 in 1916 to 725 in 1922, and 185 in the first five months of 1923. The record does not contain any assurance that future operations would show a more favorable result. (R. 245.)
>
> * * * The applicant's lines are not located and doing business wholly within the State of Colorado. The applicant is an interstate carrier, the operating results of the

branch line are reflected in its accounts, and it is required to bear or make good the deficits from such operation. It clearly appears that, in the language of the Supreme Court in the case above cited [Texas v. E. Tex. R. R., 258 U. S. 204], the large losses sustained in operating the branch line "would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce." We are of opinion that we have jurisdiction. (R. 246.)

* * * * * *

The applicant has offered to lease the line to the protestants at a nominal rental of $5 a year, provided they will operate it, and pay the operating expenses and taxes. The acceptance of this offer would enable the protestants to operate the line as an industry track or in any other manner acceptable to the State authorities. Our certificate herein will provide that it shall take effect and be in force from and after six months from the date it is issued.

Upon the facts presented we affirm the findings in our former report, 82 I. C. C. 310, and find that the present and future public convenience and necessity permit the abandonment by the applicant of the branch line of railroad in question. A certificate to that effect will be issued. (R. 246.)

On the same day (February 11, 1924) the Commission issued the following certificate and order:

AMENDED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Issued February 11, 1924

A further argument and investigation of the matters and things involved in this proceeding having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, that the present and future public convenience and necessity permit the abandonment by the Colorado & Southern Railway Company of the branch line of railroad in Chaffee County, Colo., described in the application and report aforesaid.

It is ordered, That the Colorado & Southern Railway Company, when filing schedules canceling tariffs applicable on said branch line, shall in such schedules make specific reference to this certificate by title, date, and docket number.

It is further ordered, That this certificate shall take effect and be in force from and after six months from the date of its issue, and shall replace the certificate of public convenience and necessity issued September 24, 1923, in this proceeding.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

(R. 248, 249.)

PROCEEDINGS IN THE LOWER COURT

On July 15, 1924, the State of Colorado, appellant herein, filed a petition in the court below praying for an injunction to set aside the Commission's certificate and order in so far as it applies to intrastate commerce. The United States, Interstate Commerce Commission, and the Colorado and Southern were made parties defendant and each filed an answer to the petition. (R. 39, 12, 23.) The lower court, consisting of Hon. Robert E. Lewis, Circuit Judge, Hon. J. Foster Symes, and Hon. O. L. Phillips, District Judges, heard the case upon these pleadings and upon evidence introduced at the hearing, including the evidence which was before the Interstate Commerce Commission in the proceeding above referred to, and on August 18, 1924, without rendering a formal opinion, entered judgment denying the prayer for injunction and dismissing the petition. (R. 41, 45.)

APPELLANT'S CONTENTIONS

Appellant contends in substance (1) that the right to require intrastate service is a right belonging to the State and that the Commission has no authority to authorize the abandonment as to intrastate commerce of a line of railroad like the one here under consideration which lies wholly within a State and is owned and operated by a corporation which is permitted still to hold its charter under the laws of that State, and (2) that the evidence was insufficient to support the order here in issue,

because there was no showing that the railway company is not earning a fair return on the value of its properties as a whole or on the value of that portion of its property used in intrastate business in the State of Colorado, or that future operation of the Buena Vista-Romley line in intrastate commerce would require as expensive service as past operation in both interstate and intrastate commerce. It is also contended that the offer of the railway company to lease this line at a nominal rental is no ground for abandonment, and that the findings in the minority opinion should be adopted. (Appellant's brief, pp. 15-18.)

Appellant does not question that the Colorado and Southern is an interstate carrier, or challenge the validity of the Commission's certificate and order as to abandonment of interstate and foreign business on the line here under consideration.

ARGUMENT

SUMMARY

I. The Commission has authority under the interstate commerce act to permit the abandonment of the Buena Vista-Romley line as to intrastate business as well as interstate business.

(a) The abandonment provisions are part of a new scheme of railroad legislation, intended "to provide the people of the United States with adequate transportation."

(b) The *Eastern Texas case* does not support appellant's contentions, but on the contrary shows the Commission's authority to act in this case.

II. The Commission's finding that public convenience and necessity do not require operation of the line in question is supported by the evidence, is within statutory and constitutional limits, and is conclusive.

(a) The evidence shows that the Buena Vista-Romley line is "unnecessary and unprofitable" and should no longer burden the interstate transportation system of the country and the Colorado and Southern as part of it.

(b) The record does not contain any assurance that future operations would show a more favorable result, even if operation should be in intrastate commerce alone.

(c) Profitable operation of the carrier's railroad business as a whole would not warrant the continued burden of the branch line. A showing that the carrier was not earning a fair return upon its railroad properties as a whole or upon that portion used in intrastate business in Colorado was unnecessary.

III. The Commission's certificate and order do not infringe any contract or charter rights in violation of the Constitution or amendments thereof.

IV. Other contentions are without merit.

(a) The Commission's reference to the carrier's offer to lease the line at a nominal rental or to sell it for its scrap value was proper.

(b) Findings of fact in the minority opinion of the Commission are foreclosed by the findings in the majority opinion.

PERTINENT PROVISIONS OF THE STATUTE

The provisions of the interstate commerce act relating to the extension and abandonment of railroad lines are to be found in paragraphs (18) to (22), inclusive, of section 1. For convenient reference they are set forth in full in the appendix to this brief. Congress has provided in these paragraphs that

> * * * no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate

> that the present or future public convenience and necessity permit of such abandonment. (Par. (18).)
>
> * * * From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the * * * abandonment covered thereby. (Par. (20).)

The provisions quoted are expressly restricted to carriers by railroad "subject to this act," which by section 1 are those engaged in interstate or foreign commerce.

I. THE COMMISSION HAS AUTHORITY UNDER THE INTERSTATE COMMERCE ACT TO PERMIT THE ABANDONMENT OF THE BUENA VISTA-ROMLEY LINE AS TO INTRASTATE BUSINESS AS WELL AS INTERSTATE BUSINESS

(a) The abandonment provisions are part of a new scheme of railroad legislation intended "to provide the people of the United States with adequate transportation"

The abandonment provisions of the interstate commerce act, with other important provisions, were added by the transportation act, 1920, as part of a new scheme of railroad legislation "to build up a system of railways prepared to handle promptly all the interstate traffic of the country." This court has several times construed this statute and has made it plain that one of the fundamental purposes of the new legislation is the avoidance of waste in interstate transportation, as well as main-

tenance of service; that to this end the Commission has been authorized to permit the abandonment of unnecessary and unprofitable lines of interstate carriers; that such carriers are instrumentalities or agencies of interstate and foreign commerce; and that they may be dealt with by Congress as such, without separating intrastate and interstate operations.

In *Dayton Goose Creek Ry.* v. *United States,* 263 U. S. 456, 478, which involved the constitutionality of the "recapture" paragraph of the act, the new scheme of legislation is explained, in an opinion by Mr. Chief Justice Taft as follows:

> * * * the Transportation Act adds a new and important object to previous interstate commerce legislation, which was designed primarily to prevent unreasonable or discriminatory rates against persons and localities. The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issues of securities, their car supply and distribution, their joint use of

> terminals, their construction of new lines, *their abandonment of old lines,* and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged.
>
> It was insisted in the two cases referred to, and it is insisted here, that the power to regulate interstate commerce is limited to the fixing of reasonable rates and the prevention of those which are discriminatory, and that when these objects are attained, the power of regulation is exhausted. This is too narrow a view of the commerce clause. To regulate in the sense intended is to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety.

In holding that Congress might deal with both interstate and intrastate business as a unit, this court said at page 485:

> The third question for our consideration is whether the recapture clause, by reducing the net income from intrastate rates, invades the reserved power of the States and is in conflict with the Tenth Amendment. In solving the problem of maintaining efficiency of an interstate commerce railway system which serves both the States and the Nation, Congress is dealing with a unit in which state and interstate operations are often in-

> extricably commingled. When the adequate maintenance of interstate commerce involves and makes necessary on this account the incidental and partial control of intrastate commerce, the power of Congress to exercise such control has been clearly established. [Cases cited.] The combination of uniform rates with the recapture clauses is necessary to the better development of the country's interstate transportation system as Congress has planned it. The control of the excess profit due to the level of the whole body of rates is the heart of the plan. To divide that excess and attempt to distribute one part to interstate traffic and the other to intrastate traffic would be impracticable and defeat the plan. This renders indispensable the incidental control by Congress of that part of the excess possibly due to intrastate rates which if present is indistinguishable.

In *Wisconsin Railroad Commission* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, it was held that the Commission had power under section 13 of the Act to raise the level of intrastate rates when it found that they were so low as to discriminate against interstate commerce and unduly to burden it. This court in an opinion by Mr. Chief Justice Taft said, among other things, at page 590:

> Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state

> work. The affirmative power of Congress in developing interstate commerce agencies is clear.

In the *New England Divisions case,* 261 U. S. 184, some of the new powers granted to the Commission by the transportation act to ensure adequate transportation service are pointed out by Mr. Justice Brandeis in a note on page 190. Included in these is the power of the Commission "*to authorize abandonment of unprofitable and unnecessary lines.*"

In *Davis* v. *Farmers Cooperative Company,* 262 U. S. 312, this court in an opinion by Mr. Justice Brandeis referred to "avoidance of waste" as an important purpose of the transportation act. There a state statute providing for service of an interstate carrier corporation by service upon its soliciting agent in the state was held invalid where the corporation operated no railroad lines within the state and the action arose and plaintiff resided elsewhere. After restating the purpose of the transportation act this court said, at page 317:

> * * * Avoidance of waste, in interstate transportation, as well as maintenance of service, has become a direct concern of the public. With these ends the Minnesota statute, as here applied, unduly interferes. By requiring from interstate carriers general submission to suit, it unreasonably obstructs, and unduly burdens, interstate commerce.

See also *Railroad Commission of California* v. *Southern Pacific Company*, 264 U. S. 331, dealing with the authority of the Commission to authorize extensions of railroad tracks in Los Angeles, Calif.

(b) The Eastern Texas case does not support appellant's contentions, but on the contrary shows the Commission's authority to act in this case

The interstate commerce act as construed by this Court, we submit, clearly shows that interstate carriers, singly and as part of the interstate transportation system of the country, are to be protected, under a proper finding by the Commission, from the operation of unnecessary and unprofitable lines such as the one here involved, both as to interstate and intrastate business, and that the operation of such lines is so closely related to interstate and foreign commerce as to come within the provisions of this act and the power of Congress to regulate such commerce.

Appellant, however, relies here, as it did in the proceeding before the Commission, upon *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204, to show that the Commission has no authority to permit the abandonment of intrastate business on the line in question. That is the only case in which this court has dealt with the validity of an order of the Commission under the abandonment provisions of the act. There it was held that the Commission, while having authority under section 1 of the Act to per-

mit the abandonment, as to interstate and foreign business, of a carrier's *entire line* lying in the State of Texas, could not permit the abandonment of the line as to intrastate business, because the operation of the line in intrastate commerce could not affect interstate and foreign commerce.

Since the carrier in that case had only the one line, the effect of abandonment of it as to interstate and foreign commerce was to convert the carrier from an instrumentality of interstate commerce to one of intrastate commerce only, and to divorce it from the interstate system of transportation which it was the purpose of Congress to foster and protect. The operation of the line in intrastate commerce thereafter could not affect this interstate system of transportation and could not interfere with or impose a burden upon interstate and foreign commerce. This court, in an opinion by Mr. Justice Van Devanter, took pains to point out that the carrier there involved did not operate other lines in interstate and foreign commerce, and clearly indicated that while the statute did not apply to the intrastate business there involved it would apply in a case like the one here presented.

The railroad in the *Eastern Texas case* is described in the opinion as follows:

> The Eastern Texas Railroad Company, a Texas corporation, owns and operates in that State a line of railroad 30.3 miles in length. Approximately three-fourths of the traffic

> over the road is in interstate and foreign commerce and the rest is in intrastate commerce. The company neither owns nor operates any other line. The road was constructed in 1902 to serve extensive lumber industries, but in subsequent years the adjacent timber was removed and the mills dismantled. The company claims that since 1917 the road has been operated at a loss. (P. 214.)

The difference between the abandonment of such a line, which was the only line of the railroad company, and the abandonment of a line whose unremunerative operation, if continued, must be undertaken and borne by a railroad company as an interstate carrier operating another line, was then pointed out as follows:

> The road lies entirely within a single State, is owned and operated by a corporation of that State, and is not a part of another line. Its continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce. (P. 216.)

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This court held that the abandonment provisions of the act were not to be construed as giving the Commission—

> authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business. (P. 218.)

The court in other words held that the effect of the subject matter upon interstate commerce was clearly nonexistent. The effect of the continued operation in intrastate commerce of such a line as the one here in question upon interstate and foreign commerce seems clear and in view of this and the plain language of the statute the court will not construe the statute as excluding the Commission from authority over intrastate business in making the order in question.

In *Stafford* v. *Wallace,* 258 U. S. 495, which involved the validity of the Packers and Stockyards Act of 1921, the court, at page 521, said:

> * * * Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that

of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent.

II. THE COMMISSION'S FINDING THAT PUBLIC CONVENIENCE AND NECESSITY DO NOT REQUIRE OPERATION OF THE LINE IN QUESTION IS SUPPORTED BY THE EVIDENCE, IS WITHIN STATUTORY AND CONSTITUTIONAL LIMITS, AND IS CONCLUSIVE

The rule as to judicial review of the Commission's findings and orders is stated as follows in *United States* v. *New River Co.,* 265 U. S. 533, a case involving car distribution rules as applied to joint coal mines:

> The authority conferred upon the Commerce Court by section 207 of the Judicial Code was vested in the District Courts by the Act of October 22, 1913, and, like the authority previously exercised by the Federal Circuit Courts, is confined to determining whether the Commission's order violates the Constitution, or exceeds the power delegated by statute, or is an exercise of power so arbitrary as virtually to transcend the authority conferred. * * * (P. 540.)
>
> The courts will not review determinations of the Commission made within the scope of its powers or substitute their judgment for its findings and conclusions. (P. 542.)

In *Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457, it was said at page 482:

> * * * It may be conceded that the evidence would have warranted a different finding; indeed, the first report of the Com-

> mission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this can not be done.

In the *New England Divisions Case,* 261 U. S. 184, this court said, at page 203:

> * * * The contention that the order is unsupported by the evidence rests largely upon arguments which assume a construction of the statute which we hold to be erroneous, or upon expressions in the first report of the Commission, which, in view of the second report and order thereon, must be deemed to have been withdrawn. That the evidence was ample to support the order made, is shown in the opinion of the lower court, 282 Fed. 306, 308, 309, and in the reports of the Commission. To consider the weight of the evidence, or the wisdom of the order entered, is beyond our province. * * *

In the present case the Commission, after granting a full hearing to all parties in interest, made the administrative finding which the law requires,* namely, that public convenience and necessity, present and future, do not longer require the operation of the line in question, and it thus finds that

* "In orders of this kind, not including an award of damages, formal and precise findings no longer are necessary; section 14 [of the interstate commerce act] having been amended in this respect by Act of June 29, 1906 * * * ." *Manufacturers Ry Co.* v. *United States,* 246 U. S. 457, 487.

the continued operation of this unnecessary and unprofitable line in interstate and intrastate commerce is an unreasonable burden upon the Colorado and Southern as an instrumentality of interstate commerce, upon the interstate railroad transportation system of the country, and upon interstate and foreign commerce.

In its report the Commission points out that the Colorado and Southern is an interstate carrier operating other lines than the one which is here sought to be abandoned, and the substantial losses sustained in operating this line are reflected in the accounts of this agency of interstate and foreign commerce and must be borne or made good by it. (R. 246, 174, 108.) The effect of operating this line is to add these losses to the transportation burden which the public must bear in rates made under section 15a of the act, and to impair the credit and efficiency and lessen the sound financial standing of the interstate transportation system of the country and of the Colorado and Southern as part of it.

(a) The evidence shows that the Romley line is "unnecessary and unprofitable" and should no longer burden the interstate transportation system of the country and the Colorado and Southern as part of it

The Romley line closely parallels the Denver & Rio Grande for about 7 miles from Buena Vista to Nathrop and there turns westward to Mount Princeton, about 5 miles beyond. It then enters Chalk Creek Canon and continues up this canon to Romley and past it about 2½ miles to Hancock.

(R. 89, map, opposite R. 16, 90.) It " runs right around Mount Princeton. The canon the railroad follows from Mount Princeton to Hancock is rather narrow. It is of a mountainous character—high mountains on each side of the track." (R. 91.) " The grade from Mount Princeton up is continuously a very heavy grade," the maximum being 4 per cent. (R. 88.) " The altitude of Buena Vista is 7,955 feet * * * and * * * Hancock 11,017." (R. 94.) The line must operate through heavy snows in the winter (R. 96) and is subject to " both wash-ins and washouts in the summer months." (R. 96, 97, 91.)

The territory tributary to this line, with the exception of Buena Vista, which is served by the Denver & Rio Grande, has a population of only 90 persons. (R. 142, 73.) The largest town on the line with the exception of Buena Vista is St. Elmo with a population of 37 which is slightly more than half the population in 1900 (R. 93) " and is gradually dwindling down." (R. 126.)

The traffic furnished has been insufficient to enable this line to earn more than approximately one-third of its operating expenses during the 7 years and 5 months preceding the last hearing before the Commission. The total losses in operating the line during this period, exclusive of taxes amounting to $157,244.35, were $147,597. For the last calendar year during this period, namely, 1922, the operating revenues of the line were $5,813.91, operating expenses $30,654.28, and taxes $28,838.42.

Operating revenues constantly decreased from $25,507.68 in 1916 to $5,813.91 in 1922, and $1,-788.18 for the first 5 months of 1923. (R. 67, 209.) These figures are based upon tables showing actual revenues and expenses on the Romley line (R. 148, 170) and should be distinguished from those referred to in appellant's brief (p. 11) for the years 1921 and 1922. The latter are based upon the table following R. 220 which shows revenues and expenses allocated to this line on an arbitrary mileage prorata basis (R. 170), and are, therefore, of no value in considering actual operating results.

The number of passengers handled over this line decreased from 3,711 in 1916 to 185 in the first 5 months of 1923. For 1921, 1922 and the first 5 months of 1923 the passengers averaged less than 2 a day. (R. 213.)

Metalliferous mining is about the only source of traffic on the line (R. 75, 122), and this industry "has been practically lost". (R. 140, 99.) Agriculture is negligible because of the rugged mountainous character of the territory, its high altitude, short growing season, and severe winters. (R. 75, 94, Ex. 7a, following R. 215.) Cattle and sheep are pastured along the lower portions of the line, but they are driven in and out. (R. 104, 94.)

The Mary Murphy Gold Mining Company is the only company shipping anything "worth mentioning." (R. 115.) Its shipments were few in number, amounting to only 58 narrow-gauge cars of ore in 1922, or less than 5 a month. (Fol. 318, fol-

lowing R. 214, R. 194.) It " has been in arrears on the interest on its bond issues since probably 1918, and owes that bond interest and some money besides." (R. 118, 124.) Its operations are conducted by men working as " leasers," the number diminishing from about 15 (R. 113.) at the time of the first hearing in February, 1922 to about 9 at the time of the second hearing in July, 1923. (R. 197.) This mine, in the language of the witness appearing for it, produces an ore which is " refractory and heretofore impossible of real satisfactory treatment. The intimate mixture of different metallic substances in the ore makes that condition, particularly of ore with zinc. The ore that we shipped has 8 per cent zinc, but the average ore throughout the mine would have, proportionately, a much larger percentage of zinc. The smelters penalize us on account of that content of zinc." (R. 114.) The ore is shipped over the Romley line to Buena Vista and thence via the Denver & Rio Grande to the smelter at Leadville for treatment. (R. 90, 103.) " The smelter rates have been very seriously increased in the last 5 years." (R. 118.)

At the first hearing witnesses appeared in behalf of this company and the Flora Belle Mine, the Colorado Silver Mines Company, and the Rarus Warrior Mine, all located near Romley. The owner of a granite quarry 6 miles from Nathrop also testified. The case which was made, as the Commission pointed out, " rests largely upon optimistic predictions and hopes." (R. 22.) At the second hear-

ing nearly a year and a half later the results anticipated had failed to materialize.

Shipments of the Mary Murphy Mine decreased from 87 cars in 1921 to 58 in 1922. The Rarus Warrior Mine, which shipped no cars in 1921, shipped only 4 cars of ore and 5 cars of other commodities in 1922. No shipments were made by the Flora Belle Mine, the Colorado Silver Mines Company, or the granite quarry. (R. 214, Fol. 318, R. 162, Fol. 257.) The Rarus Warrior Mine had not shipped any ore for 20 years. (R. 113, 134.) No witness appeared in behalf of this mine at the second hearing. (R. 202.) The witness for the Flora Belle Mine testified that there has been "very little change" since the first hearing (R. 200); the mine has "not been at the shipping stage; 10 or 15 cars would cover all the shipments that we have made since 1906." (R. 201, 202.) The witness for the Colorado Silver Mines Company testified that conditions at the time of the second hearing were about the same as at the first hearing, "that is, at a standstill." This mine ceased operations two years before the last hearing, and for the eight years prior thereto "shipped all told between 15 and 20 carloads." (R. 204, 205.) The witness for the granite quarry admitted "I don't say how much granite I could or would produce there if I knew the railroad was going to continue in operation." (R. 188.) "I have never shipped a car of granite over the road." (R. 189.)

Irrespective of testimony by protestants as to the impractibility of hauling ore by truck, it should not be overlooked that there is a road, used by automobiles as well as wagons, from Buena Vista to Romley. This road closely follows the railroad most of the way but is several miles shorter. (R. 91, 98, 105, 128, 136-138, 202.) A stage formerly operated over the road as far as St. Elmo (about 2 miles from Romley, R. 90) even through the winter. (R. 125.)

In appellant's brief (p. 10) the mines in Grizzly Gulch, Tincup, and Taylor Park districts are referred to as served by this line. No witness appeared in behalf of any of these mines. The record shows that they do not, and cannot reasonably be expected to, ship any traffic over the line. (R. 118, 162, Fol. 257.)

The facts before the Commission clearly showed that this was an unnecessary and unprofitable line and one which it was the purpose of Congress to prune from the interstate transportation system of the country.

(b) The record does not contain any assurance that future operations would show a more favorable result even if operation should be in intrastate commerce alone

Appellant contends that the Commission's finding that " the record does not contain any assurance that future operations would show a more favorable result" is unsupported because the line in the past has been engaged in interestate and for-

eign commerce as well as in intrastate commerce and it has not been shown that operation of the line in the future in intrastate commerce alone would require the same number of trains as in the past (pp. 41–43). The theory apparently is that reductions in service if the line were operated only in intrastate commerce might "show a more favorable result." Neither the appellant nor any other protestant, although having full opportunity to do so, offered any evidence in support of this theory. The carrier's evidence, however, shows it to be without merit.

The carrier operates on this line only one engine (R. 90, 98), which, with several cars, including a combination freight and passenger coach, makes three trips from Buena Vista to Romley and back a week (R. 86, 97). The trip from Romley beyond to Hancock is made only "occasionally" (R. 90) and when "there is freight to go" (R. 95). The carrier has only one station agent on the line, who is located at Buena Vista. (R. 90.) The engine and train employees must be paid the wages which they receive "in order to get men to operate the trains" regardless of the number of trips they make. (R. 91, 96, 83.)

The expenses of the line are necessarily great. The grade is very steep. (R. 88.) The tracks have sharp curves. (R. 89.) Only 110 gross tons can be hauled upgrade and "is the safety limit * * * coming down." (R. 94.) The operation

is difficult and expensive because of snows, floods, and slides. (R. 91, 96, 97.) Over half of the line is laid with 40-pound rails which "have been there for a long time" and would soon need renewal. (R. 90, 98.) There are 20 bridges to be maintained. (R. 92.) Large expenditures are necessary for replacing worn-out ties although, as testified by a witness for the carrier, "It has been the object of the company to keep that line safe for the amount of business that is done over it, putting in just as few ties, of course, as we can and still operate with safety." (R. 91.)

The entire revenues of this line, with the advantage of interstate business as well as intrastate business, were substantially less than the maintenance-of-way-and-structures expenses alone (R. 211) and were barely sufficient to pay only the wages of the engine crew (R. 210, 211, 142).

There is clearly no hope for the line on appellant's theory of diminished service.

(c) Profitable operation of the carrier's railroad business as a whole would not warrant the continued burden of the branch line. A showing that the carrier was not earning a fair return upon its railroad properties as a whole or upon that portion used in intrastate business in Colorado was unnecessary

The authority of the Congress and its agency, the Commission, to deal in a case like the present one with the business of an interstate carrier as a unit without separating interstate from intrastate business is well settled. See quotation from the

Dayton Goose Creek case, supra. See also *Minnesota Rate Cases,* 230 U. S. 352, 432, 433; *Illinois Central* v. *Behrens,* 233 U. S. 473, 477; and the *Wisconsin case,* 257 U. S. 563, 589, *supra.* In none of the numerous abandonment cases which the Commission has passed upon has it required a separation of property to show whether there was a fair return upon the portion devoted to intrastate service. In the *Wisconsin case,* 257 U. S. 563, *supra,* this court in commenting upon the duty of the Commission as to separating property used in such service said, pages 587, 588:

> Counsel for appellants are driven by the logic of their position to maintain that the valuation required for the purposes of section 15a to be ascertained pursuant to section 19a of the Interstate Commerce Act (37 Stat. 701; amended 41 Stat. 493), is to be only of that part of the property and equipment of the interstate carriers which is used in commerce among the States and must be segregated from that used in intrastate commerce. This is contrary to the construction which since the enactment of section 19a, March 1, 1913, the Commission has put upon that section in carrying out its injunction. It is inadmissible. The language of section 15a refutes such interpretation. The percentage is to be calculated on "the aggregate value of the railway property of such carriers held for and used in the service of transportation." To impose on the Commission the duty of separating property used in

> the two services when so much of it is used in both, and to do this in a reasonably short time for practical use, as contemplated by the statute, would be to assign it a well-nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it. They certainly do not.

The Commission had authority to determine, under the administrative powers vested in it by Congress, that this wasteful and unnecessary burden need not longer be imposed upon the interstate transportation system of the country and upon the Colorado and Southern as part of this system, and that it should not be added to the total expenses which shippers are required ultimately to pay in rates made under the provisions of the act.

Whether the carrier's business as a whole was profitable or unprofitable, public convenience and necessity did not require the continued operation of such a line and did not justify this wasteful drain, even though it be assumed that the Commission, under the doctrine of *Ft. Smith Light & T. Co.* v. *Bourland,* 267 U. S. 330, has authority to order services which may be attended by some pecuniary loss. The Act contemplates that the interstate transportation system of the country as a whole, as well as the individual carriers composing it, shall be fostered and protected. Under the "key provision" of the plan set up by Congress to accomplish this purpose, the wasteful and un-

necessary operation of a line such as the one here under consideration imposes a burden upon interstate commerce and its instrumentalities, even though the individual carrier may earn in excess of the return provided for in section 15a. Concerning this plan, this court in the *Dayton Goose Creek case, supra,* page 479, said:

> * * * The directions given to the Commission in fixing uniform rates will tend to put them on a scale enabling a railroad of average efficiency among all the carriers of the section to earn the prescribed maximum return. Those who earn more must hold one-half of the excess primarily to preserve their sound economic condition and avoid wasteful expenditures and unwise dividends. Those who earn less are to be given help by credit secured through a fund made up of the other half of the excess. By the recapture clauses Congress is enabled to maintain uniform rates for all shippers and yet keep the net returns of railways, whether strong or weak, to the varying percentages which are fair respectively for them. The recapture clauses are thus the key provision of the whole plan.

The monthly reports showing the income of the Colorado and Southern for the first 11 months of 1923, to which appellant objects on the ground that they were not in evidence, are, in view of what has been said, immaterial and clearly nonprejudicial.

If the question here were whether the Commission had authority to authorize the building of this

line in the first instance under the circumstances shown and as to whether its authority extended over the issuance of securities for such a purpose, would it be contended that the Commission is powerless to protect this interstate carrier and the interstate transportation system of the country from such an unnecessary and wasteful expenditure? In this connection the following quotation from the opinion of the Supreme Court in the *Los Angeles Union Station Case, supra,* 264 U. S. 331, is of interest:

> The purpose of Congress to prevent interstate carriers from incurring expense which will lessen their ability to perform well their interstate functions is further shown in Section 439 of the Transportation Act, whereby the Interstate Commerce Act is amended by insertion of Section 20a. This new section subjects to the approval or rejection of the Interstate Commerce Commission the issue by an interstate carrier of all future shares of stock, bonds or other evidence of indebtedness and forbids approval unless the Commission shall find that their issue is for a lawful purpose, is compatible with the public interest, is appropriate and necessary to the discharge of its public duty as a common carrier and will not impair its ability to perform that service. This is of course *in pari materia* with the restriction of paragraph 21 of Section 402 [concerning extensions] to prevent a possible impairment of the financial ability of interstate carriers to discharge their interstate commerce duties. (P. 347.)

The administrative finding by the Commission in the proceeding before it and the certificate and order based thereon, we submit, are clearly within the statutory authority vested in it by the interstate commerce act, are abundantly supported by the evidence, and are not beyond the power of Congress. The courts will not consider the weight of the evidence or the wisdom of such an order, and will not substitute their judgment for that of the Commission as to such a finding. The certificate and order are, therefore, valid and should be sustained.

III. THE COMMISSION'S CERTIFICATE AND ORDER DO NOT INFRINGE ANY CONTRACT OR CHARTER RIGHTS IN VIOLATION OF THE CONSTITUTION OR AMENDMENTS THEREOF

Whether or not the Colorado and Southern has contract or charter obligations under the laws of Colorado to operate its properties during the life of its charter, interference with such rights, resulting from the exercise of authority by the Commission under a statute enacted under the power of Congress, as in this case, would not be a taking of the property of the state or its people without due process of law.

In *New York* v. *United States,* 257 U. S. 591, the State of New York contended that an order of the Interstate Commerce Commission requiring the removal of discrimination against interstate commerce by a horizontal increase of intrastate passenger fares violated a charter fare-limiting con-

tract between the State and the New York Central Railroad and was, therefore, unconstitutional and void. The court in overruling this contention said at page 601:

> * * * But it is said that it [the order] deprives New York and her people of property without due process of law. We said in *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, 230, " Anything which directly obstructs and thus regulates that commerce which is carried on among the States, whether it is state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce." *Louisville & Nashville R. R. Co.* v. *Mottley,* 219 U. S. 467. See also *Scranton* v. *Wheeler,* 179 U. S. 141, 162, 163; *Union Bridge Co.* v. *United States,* 204 U. S. 364, 400.

In the *Mottley case* referred to in this quotation the court in holding invalid a contract granting free transportation as compensation for personal injuries, because in conflict with the anti-pass provisions of the act to regulate commerce, which were later enacted, said at page 482:

> * * * The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agree-

ment unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations, is inconceivable.

IV. OTHER CONTENTIONS ARE WITHOUT MERIT

(a) The Commission's reference to the offer of the carrier to lease the Buena Vista-Romley line to protestants at a nominal rental or to sell it to them for its scrap value was proper. It, at least, showed that the carrier attempted to do what it could to protect those who claimed to be interested. (R. 143, 180, 208.)

(b) The findings of fact in the minority opinion of the Commission are foreclosed by the findings in the majority opinion. In *Interstate Commerce Com'n* v. *D. L. & W. R. R.*, 220 U. S. 235, this court, speaking through Mr. Chief Justice White, said:

> This at once demonstrates the error committed by the lower court in basing its decree annulling the order of the Commission upon its approval and adoption of the reasons stated in the opinion of the dissenting members of the Commission. This follows, since the reasons given by the dissenting members, except in so far as they rested upon the legal proposition we have just stated, proceeded upon premises of fact, which, however cogent they may have been as a matter of original consideration, were not open to be so considered by the court because they were foreclosed by the opinion of the Commission. (P. 251.)

CONCLUSION

In the new scheme of regulation which Congress has provided in the 1920 amendment to the interstate commerce act, the Commission is vested with many important administrative powers to the end that the interstate carriers of the country may be fostered and protected as effective instrumentalities of interstate commerce and saved from incurring expenses which will lessen their ability to perform well their interstate functions. One of the most important administrative powers thus vested in the Commission is that of protecting these carriers from operating unnecessary and unprofitable lines, whether the business on such lines happens to be all interstate traffic, partly interstate and partly intrastate traffic, or all intrastate traffic.

In performing this administrative duty in the present case, the Commission has acted cautiously and deliberately, has given full opportunity to all parties in interest to be heard, and upon consideration of the evidence presented and with appropriate regard for the welfare of the persons immediately affected as well as the public at large has made its administrative finding and issued its certificate and order. In doing this the Commission acted clearly within the authority lawfully conferred upon it by Congress and in furtherance of the new scheme of railroad legislation enacted to ensure an adequate railroad transportation system for the country.

We respectfully submit that the decree of the District Court should be affirmed.

R. GRANVILLE CURRY,
For Interstate Commerce Commission.

P. J. FARRELL,
Of Counsel.

APPENDIX.

Paragraphs (18) to (22), inclusive, of section 1 of the Interstate Commerce Act as amended by Transportation Act, 1920 (24 Stat. L. 379, 41 Stat. L. 456, 477, 478), read as follows:

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other

matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certifi-

cate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years or both.

(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: *Provided*, That no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or

facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(22) The authority of the Commission, conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

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SUPREME COURT OF THE UNITED STATES.

No. 195.—October Term, 1925.

The State of Colorado, Appellant, *vs.* The United States of America et al.	Appeal from the District Court of the United States for the District of Colorado.

[May 3, 1926.]

Mr. Justice Brandeis delivered the opinion of the Court.

This suit was brought by Colorado against the United States, in the federal court for that State, to enjoin and set aside, in part, an order of the Interstate Commerce Commission issued February 11, 1924. The order is a certificate that present and future public convenience and necessity permit the abandonment by the Colorado & Southern Railway Company, six months thereafter, of a branch line located wholly in that State. The certificate was issued under Interstate Commerce Act, § 1, pars. 18-20, as amended by Transportation Act, 1920, c. 91, § 402, 41 Stat. 456, 477.

The Company is a Colorado corporation. It owns and operates in intrastate and interstate commerce a railroad system located partly in Colorado and partly in other States. The branch was constructed under the authority of Colorado and was acquired by the Company under its authority. The line is narrow gauge. It is now physically detached from other lines of the Company; but it is operated in both intrastate and interstate commerce as a part of the system by means of connections with other railroads. The certificate was granted on the ground that the local conditions are such that public convenience and necessity do not require continued operation; that for years operation of the branch had resulted in large deficits; that future operation would likewise result in large deficits; that the operating results of the branch are reflected in the Company's accounts; that it would have to make good the deficits incurred in operating the branch; and that thus continued operation would constitute an undue burden upon inter-

state commerce. *Abandonment of Branch Line by Colorado & Southern Ry.*, 72 I. C. C. 315; 82 I. C. C. 310; 86 I. C. C. 393.

The application for the certificate was filed September 1, 1921. Before any hearing thereon, the State moved that the proceeding be dismissed on the ground, among others, that, as the branch was wholly intrastate, the Commission was without jurisdiction of the application. This objection was overruled. Thereafter, the State opposed, on the merits, the granting of the certificate. The case was first heard before Division 4 of the Commission on exceptions filed by the Company to the examiner's proposed report. On July 28, 1922, the application was denied, with leave to renew it "if the improvement in operating results, confidently anticipated by protestants, should not materialize." 72 I. C. C. 315. On May 19, 1923, the Company filed a petition praying that the case be reopened and set for further hearing. Division 4 heard it. On September 24, 1923, an order was entered that the certificate issue. 82 I. C. C. 310. A hearing before the full Commission was then sought by the State and the other protestants. Compare *United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 281. The request was granted. On February 11, 1924, the order was affirmed with the modification that the certificate should not take effect until six months from that date. 86 I. C. C. 393. The effective date of the certificate was later extended to September 11, 1924; and finally to October 11, 1924. 94 I. C. C. 657, 661.

Meanwhile, this suit had been begun. The Commission and the Company intervened as defendants. On August 19, 1924, a decree dismissing the bill on the merits was entered, upon final hearing, without opinion. A motion for a suspension of the order of the Commission pending an appeal was denied. The case is here on direct appeal under the Act of October 22, 1913, c. 32, 38 Stat. 208, 220. The order is assailed as void insofar as it authorizes abandonment and discontinuance of operation in intrastate traffic. The remedy pursued is the appropriate one. See *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204.

First. The main contention of the State is that the Commission lacks power to authorize the Company to abandon, as respects intrastate traffic, a part of its line lying wholly within the State. The argument is this. While a railroad cannot, in the absence of express statutory provision or contract, be compelled by a State to continue operating its lines at a loss when there is no reasonable prospect of future profit, and may, therefore, without such consent,

abandon all lines within the State, *Brooks-Scanlon Co.* v. *Railroad Commission*, 251 U. S. 396; *Bullock* v. *Florida*, 254 U. S. 513, 520; *Railroad Commission* v. *Eastern Texas R. R. Co.*, 264 U. S. 79, 85; it has no right to abandon a part of the lines, merely because operation will be attended by pecuniary loss, and still continue to enjoy the privilege of operating other parts within the State; *Chesapeake & Ohio Ry. Co.* v. *Public Service Commission*, 242 U. S. 603; *Fort Smith Light & Traction Co.* v. *Bourland*, 267 U. S. 330. The charter of the Colorado & Southern is a contract with the State. By accepting the charter, the Company assumed the obligation of providing intrastate service on every part of its line within the State, *Colorado & Southern Ry.* v. *Railroad Commission*, 54 Colo. 64, 92-3. The extent and character of this service is subject to regulation by the State. The inherent power of a State to regulate intrastate traffic by requiring the railroad to operate every part of its line, like its power to order a particular service, is, of course, subject to the limitation that the order must not be unreasonable. But the fact that operation of the branch will necessarily result in financial loss, would, in no event, be more than an important circumstance bearing upon the reasonableness of the State's order requiring the service. In the case at bar no question of the reasonableness of the State's action can arise, because the State has not issued any order; it has merely protested against the Commission's releasing this Colorado corporation from the primary duty voluntarily assumed of maintaining some service on the branch. This, the Commission cannot do as respects intrastate commerce. Transportation Act, 1920, did not purport to take from the State its powers to control intrastate commerce. Nor did it confer upon the Commission power to release a corporation chartered by the State from its primary obligation to furnish service. If par. 18 of § 1 should be construed as authorizing the Commission to do so without the consent of the State, the provision would be unconstitutional. Compare *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204, 217. Such is the argument.

The argument rests upon a misconception of the nature of the power exercised by the Commission in authorizing abandonment under paragraphs 18-20. The certificate issues not primarily to protect the railroad, but to protect interstate commerce from undue burdens or discrimination. The Commission by its order removes an obstruction which would otherwise prevent the railroad from

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performing its federal duty. Prejudice to interstate commerce may be effected in many ways. One way is by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce. Expenditures in the local interest may be so large as to compel the carrier to raise reasonable interstate rates, or to abstain from making an appropriate reduction of such rates, or to curtail interstate service, or to forego facilities needed in interstate commerce. Likewise, excessive local expenditures may so weaken the financial condition of the carrier as to raise the cost of securing capital required for providing transportation facilities used in the service, and thus compel an increase of rates. Such depletion of the common resources in the local interest may conceivably be effected by continued operation of an intrastate branch in intrastate commerce at a large loss.

The sole objective of paragraphs 18-20 is the regulation of interstate commerce. Control is exerted over intrastate commerce only because such control is a necessary incident of freeing interstate commerce from the unreasonable burdens, obstruction or unjust discrimination which is found to result from operating a branch at a large loss. Congress has power to authorize abandonment, because the State's power to regulate and promote intrastate commerce may not be exercised in such a way as to prejudice interstate commerce. The exertion of the federal power to prevent prejudice to interstate commerce so arising from the operation of a branch in intrastate commerce is similar to that exerted when a State establishes intrastate rates so low that intrastate traffic does not bear its fair share of the cost of the service, *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *Nashville, Chattanooga & St. Louis Ry.* v. *Tennessee*, 262 U. S. 318; or when the state authorities seek to compel the erection of a union station so expensive as unduly to deplete the financial resources of the carriers, *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331; or when one railroad seeks to construct an intrastate branch line, which will deplete its own financial resources or those of another interstate carrier, *Texas & Pacific Ry. Co.* v. *Gulf, Colorado & Santa Fe Ry. Co.*, decided March 1, 1926. The jurisdiction exercised by the Commission in these cases is in essence that which was invoked in *The Shreveport Case*, 234 U. S. 342, a power to prevent unjust preference to

particular intrastate shippers or localities at the demonstrated expense of interstate commerce. But there is a broader basis for federal control.

This railroad, like most others, was chartered to engage in both intrastate and interstate commerce. The same instrumentality serves both. The two services are inextricably intertwined. The extent and manner in which one is performed, necessarily affects the performance of the other. Efficient performance of either is dependent upon the efficient performance of the transportation system as a whole. Congress did not, in the respect here under consideration, assume exclusive regulation of the common instrumentality, as it did in respect to safety coupling devices. Compare *Southern Ry. Co.* v. *United States,* 222 U. S. 20; *Atlantic Coast Line* v. *Georgia,* 234 U. S. 280, 293. It expressly excluded from federal control that part of the railroad which consists of "spur, industrial, team, switching or side tracks located . . . wholly within one State." See *Texas & Pacific Ry. Co.* v. *Gulf, Colorado & Santa Fe Ry. Co.,* decided March 1, 1926. But as to the rest of every railroad line used in interstate commerce, Congress reserved the full authority to determine whether, and to what extent, public convenience and necessity permit of abandonment.

Recognition of the effect upon interstate commerce of the use of the same instrumentality in intrastate commerce is manifested also in other provisions of Transportation Act, 1920. It is a reason for the exclusive jurisdiction conferred upon the Commission by § 20a over the issuance of securities. Compare *Venner* v. *Michigan Central R. R. Co.,* No. 190, decided April 26, 1926. It is the ground upon which the validity of the recapture clause, as applied to surplus profits derived from intrastate operations, was sustained in *Dayton-Goose Creek Ry.* v. *United States,* 263 U. S. 456, 485. It is the justification for those provisions of the Interstate Commerce Act which require carriers engaged in both intrastate and interstate commerce to render accounts of all their business. *Interstate Commerce Commission* v. *Goodrich Transit Co.,* 224 U. S. 194. And upon it rests likewise the power exerted by this Court in setting aside the state regulations involved in *Union Pacific R. R. Co.* v. *Public Service Commission,* 248 U. S. 67, and *St. Louis & San Francisco Ry. Co.* v. *Public Service Commission,* 254 U. S. 535. See also *United States* v. *Ferger,* 250 U. S. 199; *Stafford* v.

Wallace, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1.

The exercise of federal power in authorizing abandonment is not an invasion of a field reserved to the State. The obligation assumed by the corporation under its charter of providing intrastate service on every part of its line within the State is subordinate to the performance by it of its federal duty, also assumed, efficiently to render transportation services in interstate commerce. There is no contention here that the railroad by its charter agreed in terms to continue to operate this branch regardless of loss. Compare *Railroad Commission* v. *Eastern Texas R. R. Co.*, 264 U. S. 79. But even explicit charter provisions must yield to the paramount power of Congress to regulate interstate commerce. *New York* v. *United States*, 257 U. S. 591, 601. Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control insofar as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres in the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment upon the facts of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission.

Second. The State contends further that the order is void, so far as it relates to intrastate traffic, because essential findings were not made and, also, because essential findings made were not supported by evidence. *The Chicago Junction Case*, 264 U. S. 258. The findings alleged to be essential and lacking are that by continued operation of the branch interstate or foreign commerce will be discriminated against, or that the Company will be prevented from earning a fair return on the value of its properties as a whole, or that the entire intrastate business in Colorado will not earn such a return upon the property used in conducting that business. The other objections urged are that the evidence of past operating deficits on the branch, which include both interstate and intrastate traffic, does not support the finding that operation in intrastate traffic alone will result in like deficits; and that the decision of the Commission was improperly influenced by an offer

to lease the line to the protestants at a nominal rental. All the evidence before the Commission was introduced below and is, in substance, incorporated in the record on appeal. Both classes of objections must, therefore, be considered. *New England Divisions Case*, 261 U. S. 184, 203.

Before examining the specific objections, the nature of the determination to be made by the Commission upon an application for leave to abandon should be further considered. As every projected abandonment of any part of a railroad engaged in both interstate and intrastate commerce may conceivably involve a conflict between state and national interests, the consent of the Commission must be obtained by the railroad in every case. To ensure due consideration of the local interests, Congress provided that a copy of every application must be promptly filed with the Governor of the State directly affected, that notice of the application must be published in some local newspaper, and that the appropriate state authorities should have "the right to make before the Commission such representations as they may deem just and proper for preserving the rights and interests of their people and the States, respectively, involved in such proceedings." In practice, representatives of state regulatory bodies sit, sometimes, with the representatives of the Commission at hearings upon the application for a certificate. Occasionally, the Commission leaves the preliminary enquiry to the state body. And always consideration is given by the Commission to the representations of the state authorities.[1]

While the constitutional basis of authority to issue the certificate of abandonment is the power of Congress to regulate interstate commerce, the Act does not make issuance of the certificate conditional upon a finding that continued operation will result in discrimination against interstate commerce, or that it will result in a denial of just compensation for the use in intrastate commerce of the

[1]From the enactment of Transportation Act, 1920, to February 18, 1926, the number of applications for abandonment acted on was 191. Of these, 9 were dismissed by the Commission for want of jurisdiction; 11 were denied; 170 were granted. Of these 170, only 6 were granted contrary to the recommendation of the state authorities. Of the 47 cases in which state authorities made specific recommendations, the Commission acted in 38 in accordance therewith. In 2 cases in which the State recommended postponement, the Commission denied the application. In one, in which the State recommended denial of the application, the Commission postponed decision pending the result of operation during a test period.

property of the carrier within the State, or that it will result in a denial of such compensation for the property within the State used in commerce intrastate and interstate. The sole test prescribed is that abandonment be consistent with public necessity and convenience. In determining whether it is, the Commission must have regard to the needs of both intrastate and interstate commerce. For it was a purpose of Transportation Act, 1920, to establish and maintain adequate service for both. *Wisconsin Railroad Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 585, 587, 589; *New England Divisions Case*, 261 U. S. 184; *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, 485; *United States* v. *Village of Hubbard*, 266 U. S. 474. The benefit to one of the abandonment must be weighed against the inconvenience and loss to which the other will thereby be subjected. Conversely, the benefits to particular communities and commerce of continued operation must be weighed against the burden thereby imposed upon other commerce. Compare *Proposed Abandonment by Boston & Maine R. R.*, 105 I. C. C. 13, 16. The result of this weighing—the judgment of the Commission—is expressed by its order granting or denying the certificate.

It is rare that the application for leave to abandon actually involves a conflict between the needs of interstate and of intrastate commerce. In many cases, it is clear that the extent of the whole traffic, the degree of dependence of the communities directly affected upon the particular means of transportation, and other attendant conditions, are such that the carrier may not justly be required to continue to bear the financial loss necessarily entailed by operation.[2] In some cases, although the volume of the whole traffic is small, the question is whether abandonment may justly be permitted, in view of the fact that it would subject the communities directly affected to serious injury while continued operation would impose a relatively light burden upon a prosperous carrier.[3] The

[2]See e. g., Abandonment, etc., by Southern Pacific Co., 72 I. C. C. 404.

[3]Compare Application of Green Bay & Western R. R. Co., 70 I. C. C. 251; Abandonment of White-Cloud Big Rapids Branch, etc., 72 I. C. C. 303; Proposed Abandonment of Lincoln Branch, etc., 94 I. C. C. 624, with Abandonment, etc., Oregon Trunk Ry., 72 I. C. C. 679; Abandonment of Branch Line by Pere Marquette Ry., 90 I. C. C. 100; Abandonment, etc., by Central New England Ry. Co., 94 I. C. C. 405; Abandonment, etc., by Coudersport & Port Albany R. R. Co., 99 I. C. C. 310; Abandonment, etc., by Chicago & Northwestern Ry. Co., 105 I. C. C. 273.

problem and the process are substantially the same in these cases as where the conflict is between the needs of intrastate and of interstate commerce. Whatever the precise nature of these conflicting needs, the determination is made upon a balancing of the respective interests—the effort being to decide what fairness to all concerned demands. In that balancing, the fact of demonstrated prejudice to interstate commerce and the absence of earnings adequate to afford reasonable compensation are, of course, relevant and may often be controlling. But the Act does not make issuance of the certificate dependent upon a specific finding to that effect.

An examination of the extensive record and of the three opinions of the Commission convinces us that no relevant fact was ignored, that there was ample evidence to support the facts found, and that the judgment of the Commission was not improperly influenced by the offer to lease the line to the protestants at a nominal rental. The case at bar is unlike *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204. There, the railroad was permitted to be relieved only from continuing operations in interstate commerce. It was being operated independently, and not as a branch of any railroad engaged in interstate commerce. Losses incurred in its operation would not be reflected in the accounts of any interstate carrier; and no interstate carrier would have had to make good deficits so incurred. Its continued operation could not burden or prejudice interstate commerce, for the Commission in issuing its certificate had adjudged that public necessity and convenience did not demand the continuance of its interstate services.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.